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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 9

[Docket ID: FSA–2020–0004]

RIN 0503–AA65

Coronavirus Food Assistance Program

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Secretary of Agriculture is issuing this rule to implement the Coronavirus Food Assistance Program (CFAP). CFAP provides assistance to agricultural producers impacted by the effects of the COVID–19 outbreak. This rule establishes provisions for direct payments to producers of eligible commodities. This rule specifies the eligibility requirements, payment calculations, and application procedures for CFAP.

DATES: *Effective Date:* May 21, 2020.

FOR FURTHER INFORMATION CONTACT: William L. Beam; telephone: (202) 720–3175; email: *Bill.Beam@usda.gov*. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

In response to the COVID–19 outbreak, the Coronavirus Aid, Relief, and Economic Stability Act (CARES Act; Pub. L. 116–136) was enacted. Title 1 of Division B, of that Act provides $9.5 billion to remain available until expended, for the Office of the Secretary to use to prevent, prepare for, and respond to coronavirus by providing support for agricultural producers impacted by coronavirus, including producers of specialty crops, producers that supply local food systems, including farmers markets, restaurants, and schools, and livestock producers, including dairy producers. The amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

This rule implements the $9.5 billion provided under the CARES Act to support agricultural producers to prevent, prepare for, and respond to coronavirus. In addition, in accordance with 15 U.S.C. 714b, the Secretary is using funds of the Commodity Credit Corporation (CCC) to assist producers with the purchase of materials and facilities required in connection with the production and marketing of agricultural commodities and to remove surplus commodities from normal marketing channels. At this time, the amount of CCC funds available for these purposes is limited to $6.5 billion. While section 11002 of the CARES Act provides for a $14 billion replenishment of CCC's borrowing authority, these funds will not be available to CCC until after June 2020.

Taking into account these two funding sources, the Secretary has established CFAP to provide producers with financial assistance that helps offset sales losses and increased marketing costs associated with the COVID–19 pandemic. Income losses will be partially compensated under the CARES Act. CCC authorities will be used to partially compensate producers for the purchase of materials and facilities required in connection with the production and marketing of agricultural commodities and the disposal of surplus commodities from normal marketing channels that may be currently unavailable. In order to reduce the exposure of producers to COVID–19 and to reduce the workload of USDA employees during this pandemic, one payment application and one payment will be issued by USDA to eligible producers by combining CARES Act and CCC funds.

Two principal USDA agencies will be used by the Secretary to implement CFAP, the Farm Service Agency (FSA) and the Agricultural Marketing Service (AMS). FSA will be the principal agency charged with implementing CFAP and AMS will assist FSA with respect to matters dealing with producers of specialty crops.

Generally, in order to be eligible for a payment, a producer must have suffered a 5-percent-or-greater price loss over a specified time resulting from the COVID–19 outbreak or face additional significant marketing costs for inventories. COVID–19 price losses are due to significant declines in certain types of demand. Additional marketing costs from COVID–19 are due to surplus production or to disruptions to shipping patterns and the orderly marketing of commodities. In addition, due to the COVID–19 outbreak, many farmers markets, restaurants, and schools have temporarily or permanently closed, thus causing significantly decreased demand for commodities grown by producers that are ordinarily supplied to these places. Non-specialty crops eligible for CFAP payments are malting barley, canola, corn, upland cotton, millet, oats, sorghum, soybeans, sunflowers, durum wheat, and hard red spring wheat. Payments also will be available for specialty crops (including, but not limited to almonds, beans, broccoli, sweet corn, lemons, iceberg lettuce, spinach, squash, strawberries, and tomatoes), dairy, cattle, lambs and yearlings, wool, and hogs and pigs. Additional eligible commodities, such as aquaculture and nursery crops (including cut flowers) will be announced in a subsequently announced Notice of Funding Availability (NOFA) issued by FSA on behalf of the Secretary; any additional commodities would also need to meet the eligibility requirements in this rule. Throughout this rule, ''producer'' refers to a person or legal entity who shares in the risk of producing a crop or livestock and who is entitled to a share in the crop or livestock available for marketing.

CFAP will provide eligible producers with financial assistance that helps them offset sales losses and increased marketing costs resulting from the COVID–19 pandemic. With respect to commodity and livestock losses due to price declines that occurred between mid-January 2020 and mid-April 2020 and, in the case of specialty crops, for products that were shipped but spoiled and no payment was received, CARES Act funds will be used in accordance with authority under the CARES Act. Funds available to CCC will be used as authorized by sections 5(b), (d), and (e) of the CCC Charter Act (15 U.S.C. 714c(b), (d), and (e)). These authorities will be used to partially compensate producers for on-going market

disruptions and assist with the transition to a more orderly marketing system as the pandemic wanes by:

- Assisting with the purchase of materials and facilities required in connection with the production and marketing of agricultural commodities;
- Aiding in the removal or disposition of surplus agricultural commodities; and
- Aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

USDA will track funds from the CARES Act and the CCC Charter Act separately, to ensure that the payments are consistent with each respective authority. Payment for income loss is consistent with the authority provided in the CARES Act. Payment to aid in the removal or disposition of surplus agricultural commodities and for additional marketing and production costs is consistent with the authority provided in the CCC Charter Act. All payments will be tracked by the type of funding. If a single payment includes a portion from each type of funding, USDA will track the funds separately.

Payments

Payments will be calculated using payment rates as specified in Tables 1 & 2 in the CFAP regulation in 7 CFR 9.5. USDA will make an initial payment of 80 percent of an eligible 2020 CFAP participant's calculated 2020 CFAP payment. By issuing initial payments, FSA can quickly provide assistance to those eligible participants that immediately apply for assistance while trying to ensure that 2020 CFAP payments do not exceed the $16 billion funding limit to ensure those funds are distributed equitably among all eligible producers. If funds remain available after the initial payment to eligible applicants, USDA will disburse the remainder of available funding not to exceed the $16 billion funding limit and funds may prorated if necessary. The payment rates will be applied as discussed below.

For producers of non-specialty crops, an average payment rate per unit (bushel, pound, or hundredweight) will be determined for each eligible commodity based on the decline in the weekly average of the futures prices (or weekly average of the cash prices, if futures prices are unavailable) [1] between the average for the week of January 13–17, 2020, and the average for the week of April 6–9, 2020.[2] Only the comparison between those two-week periods is used. If the decline in futures prices is 5 percent or greater between those time periods, a payment for that commodity is triggered and eligible producers are paid based on inventory held on January 15, 2020. Eligible inventory for the purpose of non-specialty crops is the lower of self-certified unpriced inventory that an eligible producer has vested ownership in as of January 15, 2020, or 50 percent of the eligible producer's 2019 production of that commodity. CARES Act funds will be used to make a payment for a producer by multiplying 50 percent of the producer's eligible inventory on January 15, 2020, by a pre-specified payment rate calculated as 50 percent of the calculated futures (or cash, if futures are unavailable) price decline. CCC funds will be used to make a payment to the producer by multiplying 50 percent of the eligible inventory by a pre-specified payment rate calculated as 55 percent of the futures (or cash, if futures are unavailable) price decline. These two separate payments will be issued as one payment to the eligible producer.

For producers of specialty crops (including, but not limited to, almonds, beans, broccoli, sweet corn, lemons, iceberg lettuce, spinach, squash, strawberries, and tomatoes) that incurred a 5-percent-or-greater reduction in sales price between the average for the week of January 13–17, 2020, and the average for the week of April 6–10, 2020, payments will be based on the producer's sales (volume) during that timeframe multiplied by a pre-specified payment rate calculated as 80 percent of the given crop's mid-January to mid-April price change. For producers of specialty crops that have been shipped from the farm by April 15, 2020, but subsequently spoiled due to loss of marketing channels, payments will be based on the volume of shipped, spoiled crops multiplied by a pre-specified payment rate expected to represent 30 percent of the crop's sales value. For producers with specialty crop shipments that have not left the farm or mature crops that were unharvested between January 15, 2020 and April 15, 2020, and which have not been and will not be sold, payments will be based on the volume of unharvested and/or unshipped crops multiplied by a pre-specified payment rate expected to represent 5.875 percent of the crop's value.

For cattle, hog and pig, and lamb and yearling producers, payments will be made using CARES Act funds by multiplying a payment rate per head—specified by species and class—by the volume of sales occurring between January 15 and April 15, 2020, by the applicable payment rate. CCC funds will be used to make a payment to the producer by multiplying a payment rate per head—specified by species—by the highest inventory number between April 16 and May 14, 2020.

For producers of wool, a single average payment rate on a clean basis per pound will be determined using the Eastern Market Indicator, as reported by AMS in the *National Wool Review,* for the weeks ending with January 17, 2020, and April 10, 2020. Only the comparison between those two-week periods is used. Producers are paid based on inventory held on January 15, 2020. Eligible inventory for the purpose of wool is the lower of self-certified unpriced inventory that an eligible producer has vested ownership in as of January 15, 2020, or 50 percent of the eligible producer's 2019 production of that commodity. CARES Act funds will be used to make a payment for a producer by multiplying 50 percent of the producer's January 15, 2020, eligible inventory, by a pre-specified payment rate calculated as 50 percent of the calculated price decline. CCC funds will be used to make a payment to the producer by multiplying 50 percent of such inventory by a pre-specified payment rate calculated as 55 percent of such price decline.

For dairy producers, payments using funding from the CARES Act will be determined by multiplying a producer's milk production for the first quarter of calendar year 2020 by a pre-specified payment rate calculated as 80 percent of the decline in prices as determined by USDA during that quarter. Payments under the CCC Charter Act will be determined by multiplying a producer's milk production for the first quarter of calendar year 2020 by a factor of 1.014 —in order to account for increased

[1] Futures market (May contracts quoted on the Chicago Board of Trade for all crops other than wheat and cotton. Wheat uses the May contract quoted on the Minneapolis Grain Exchange and upland cotton uses the May contract quoted on the Intercontinental Exchange. Canola uses the May contract on the Intercontinental Exchange in Canadian dollars, which are exchanged into U.S. dollars). The price for sorghum is calculated as 95 percent of the corn futures price, which is consistent with the multiplicative factor used by the Risk Management Agency (RMA) under the Commodity Exchange Price Provisions (CEPP). The price of durum wheat is calculated as 103.4 percent of the Hard Red Spring Wheat futures price, which is the multiplicative factor used under CEPP for Montana, North Dakota, and South Dakota. The price of sunflowers is the soybean oil price divided by two plus one cent, which is consistent with the CEPP for oil-type sunflowers. AMS data is used for other crops where futures contracts are not traded.

[2] The futures markets were closed on Friday, April 10, 2020, for Good Friday, so the weekly average futures price for the week starting on Monday, April 6, 2020, does not include Friday, April 10, 2020.

production in the second quarter of calendar year 2020—by a pre-specified payment rate calculated as 25 percent of the decline in prices as determined by USDA during the first quarter of calendar year 2020.

Payments under the CARES Act and CCC Charter Act will be issued as one payment to the producer if such producer is eligible to receive both parts, and disbursed in a combination of initial and final payments as previously described.

Producer Eligibility Requirements

To be eligible for a CFAP payment, a person or legal entity must:

(1) Complete a CFAP application form and provide any required documentation (as specified in this final rule); and

(2) Be a producer having a share in the eligible commodity between January 15, 2020, and April 15, 2020, or April 16, 2020, through May 14, 2020.

Average Adjusted Gross Income Limitation and Payment Limitation

CFAP payments are subject to a per person and legal entity payment limitation of $250,000. This limitation applies to the total amount of CFAP payments made with respect to all eligible commodities. Similar to the manner in which statutory payment limitations are applied in the major commodity and disaster assistance programs administered by FSA, payments will be attributed to an individual through the direct attribution process used in those programs. The total payment amount of CFAP payments attributed to an individual will be determined by taking into account the direct and indirect ownership interests of the individual in all legal entities participating in CFAP.

Unlike other FSA administered programs, special payment limitation rules will be applied to participants that are corporations, limited liability companies, and limited partnerships (corporate entities). These corporate entities may receive up to $750,000 based upon the number of shareholders (not to exceed three shareholders) who are contributing substantial labor or management with respect to the operation of the corporate entity. For a corporate entity with one such shareholder, the payment limit for the entity is $250,000; for a corporate entity with two such shareholders, the payment limit for the entity is $500,000 if at least two members contribute substantial labor or management with respect to the operation of the corporate entity; and for a corporate entity with three such shareholders, the limit is $750,000 if at least three members contribute substantial labor or management with respect to the operation of the corporate entity. If payments are calculated for a corporate entity and those payments exceed the applicable limit of $250,000, $500,000 or $750,000, the reduction will be attributed to all members of the entity to ensure that a net payment to the entity is not in excess of the applicable limitation. A corporate entity may receive more than $250,000 in CFAP payments if the applicant, under penalty of perjury, certifies that two or three members of the corporation each provide at least 400 hours of active personal management or personal active labor, in which case the corporate entity may be eligible to receive up to $500,000 or $750,000, respectively.

A person or legal entity, other than a joint venture or general partnership, is ineligible for payments if the person's or legal entity's average adjusted gross income (AGI), using the average of the adjusted gross incomes for the 2016, 2017 and 2018 tax years, is more than $900,000, unless at least 75 percent of that person's or legal entity's average AGI is derived from farming, ranching, or forestry-related activities. If at least 75 percent of the person's or legal entity's AGI is derived from farming, ranching, or forestry-related activities and the participant provides the required certification and documentation, the person or legal entity is eligible to receive CFAP payments up to the applicable payment limitation noted above. With respect to joint ventures and general partnerships, this AGI provision will be applied to each member of the joint venture and general partnership.

CFAP General Requirements

General requirements that apply to other FSA-administered commodity programs also apply to CFAP, including compliance with the provisions of 7 CFR part 12, ''Highly Erodible Land and Wetland Conservation.''

The regulations in 7 CFR part 1400, subpart E, are applicable to foreign persons and legal entities containing members, stockholders, or partners who are foreign persons applying for CFAP. Under the subpart E regulations, in order for a foreign person to receive a CFAP payment, the person must provide land, capital, and a substantial amount of active personal labor to the farming operation. For the purposes for this rule, USDA has established that 400 hours of active personal labor or active personal management as defined in 7 CFR 1400.3 is considered a substantial contribution to the farming operation. If a legal entity is owned in whole or in part by a foreign person, then in order for the legal entity to receive a payment that is representative of the foreign person's interest in the entity, the foreign person must provide a substantial amount of active personal labor in the operation of the legal entity. Additionally, United States Federal, State, and local governments are not eligible for CFAP payments.

There is no requirement to have crop insurance coverage or coverage under the Noninsured Crop Disaster Assistance Program (NAP) for an eligible CFAP commodity to be eligible for participation in CFAP.

Appeal regulations specified in 7 CFR parts 11 and 780 apply to determinations under CFAP. The determination of matters of general applicability that are not in response to, or result from, an individual set of facts in an individual participant's application for payment are not matters that can be appealed. Such matters of general applicability include, but are not limited to, the determination of payment rates and commodities included in CFAP.

Application Process

USDA will accept CFAP applications beginning May 26, 2020. To apply for CFAP payments, producers must submit a completed CFAP application either in person, by mail, email, or facsimile to an FSA county office. If a producer who applies must submit additional documentation for eligibility, such as certifications of compliance with adjusted gross income provisions and conservation compliance activities, those additional documents and forms must be submitted no later than 60 days from the date a producer signs the application. Payments will not be made until all necessary eligibility documentation is received, and will be reduced or not issued to the individuals or members of the entity when the documentation is not submitted timely.

If supporting documentation is requested to verify the amounts specified on the application, the producer must provide records that substantiate the reported amounts. The producer's production for the commodity, which includes non-specialty crops, dairy, and specialty crops, is based on production records. The producer's inventory, which includes livestock, non-specialty crops, and wool, is based on inventory records. Examples of supporting documentation include evidence provided by the producer that is used to substantiate the amount of production or inventory reported, including copies of receipts,

ledgers of income, income statements of deposit slips, veterinarian records, register tapes, invoices for custom harvesting, and records to verify production costs, contemporaneous measurements, truck scale tickets, or contemporaneous diaries that are determined acceptable by USDA.

For specialty crops, FSA will process applications from producers who experienced loss due to the 5-percent-or-greater reduction in sales price. FSA will send some applications to AMS to be spot-checked prior to payment. AMS will review the applications and provide payment recommendations to FSA.

The CFAP application period will end August 28, 2020. If any supporting documentation or form is required in order to process the CFAP application and that documentation or form is not submitted to FSA within 60 days of the producer's signature date on the application, the CFAP application that had been submitted will not be processed and will not be acted on by USDA.

Provisions Requiring Refund to USDA

In the event that any application for a CFAP payment resulted from erroneous information reported by the producer, the payment will be recalculated, and the producer must refund any excess payment to USDA. If the error was the producer's error, the refund must include interest [3] to be calculated from the date of the disbursement to the producer.

If USDA determines that the producer's application misrepresented either the total amount or producer's share of the crop, head of livestock, or production, or if the CFAP payment would exceed the payment as calculated based on the correct amount of production and share, the application will be disapproved and the participant must refund to USDA all CFAP payments made to the producer with interest from the date of disbursement.

If any corrections to the ownership interest in the crop are made and would result in a lower CFAP payment, the producer must refund the difference with interest from date of disbursement.

Any required refunds must be resolved in accordance with debt settlement regulations at 7 CFR part 3.

Effective Date and Notice and Comment

The Administrative Procedure Act (5 U.S.C. 553(a)(2)) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to benefits. This rule governs CFAP for payments to certain commodity producers and therefore falls within that exemption.

The Office of Management and Budget (OMB) designated this rule as major under the Congressional Review Act (CRA), as defined by 5 U.S.C. 804(2). Section 808 of the CRA allows an agency to make a major regulation effective immediately if the agency finds there is good cause to do so. The beneficiaries of this rule have been significantly impacted by the COVID–19 outbreak, which has resulted in income losses due to significant declines in demand and market disruptions. USDA finds that notice and public procedure are contrary to the public interest. Therefore, even though this rule is a major rule for purposes of the Congressional Review Act, USDA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective upon publication in the **Federal Register**.

Executive Orders 12866, 13563, and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, 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 requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant. Further, Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as economically significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on *regulations.gov*.

Cost Benefit Analysis Summary

USDA is implementing CFAP for producers of agricultural commodities who have suffered a 5-percent-or-greater price loss due to COVID–19 and face additional significant marketing costs associated that are eligible for compensation under section 5(b), (d), and (e) of the CCC Charter Act for currently held inventories. These additional significant marketing costs are associated with lower prices given significant declines in demand, surplus production, or by disruptions to shipping patterns and the orderly marketing of commodities. Non-specialty crops eligible for CFAP payments are malting barley, canola, corn, upland cotton, millet, oats, soybeans, sorghum, sunflowers, durum wheat, and hard red spring wheat. Payments also will be available to producers of specialty crops (including, but not limited to, almonds, beans, broccoli, sweet corn, lemons, iceberg lettuce, spinach, squash, strawberries, and tomatoes) and livestock commodities (including dairy, cattle, hogs and pigs, lambs and yearlings, and wool). CFAP eligibility for certain other agricultural commodities including agricultural commodities for which sufficient information is not currently available to USDA may be announced through a NOFA. Approximately 4 percent of the CFAP budget—$637 million— is available to provide assistance to producers of other commodities that are identified through the NOFA process.

CFAP will provide producers of agricultural commodities with financial assistance that gives them the ability to absorb sales losses and increased marketing costs associated with the COVID–19 pandemic. Producers will receive payments under the CARES Act, in the amount of $9.5 billion, to partially compensate producers for losses due to price declines that occurred between mid-January 2020 and mid-April, 2020, and for specialty crops that have been shipped from the farm by April 15th but subsequently spoiled due to loss of marketing channel. Producers will also receive payments under sections 5(b), (d), and (e) of the CCC Charter Act to partially compensate producers for $6.5 billion for on-going market disruptions and will assist with the transition to a more orderly marketing system as the COVID–19 pandemic wanes. CCC funds will assist producers with the purchase of materials and facilities required in connection with the production and marketing of agricultural commodities and aid in the development of new and

[3] The program interest rate is based on the CCC borrowing rate in effect for the month the payment was disbursed. The CCC borrowing rate for May is 0.125 percent.

additional markets, marketing facilities, and uses for such commodities.

For producers of non-specialty crops, a single average payment rate per unit (bushel, pound, or hundredweight) will be determined for each eligible commodity based on the decline in the average of such futures price (or cash price, if futures price is unavailable) using the average of such future price for the week of January 13–17, 2020, in a comparison with the average of such future price for the week of April 6–9, 2020. If the decline of such futures price over this time frame is 5 percent or greater, a payment for that commodity is triggered and producers are paid based on unpriced inventory held on January 15, 2020. For non-specialty crops, inventory held is defined as the lower of self-certified unpriced inventory that an eligible producer has vested ownership in on January 15, 2020, or 50 percent of the eligible producer's 2019 production of that commodity. Payments made under the CARES Act will be made by multiplying 50 percent of the producer's unpriced inventory held on January 15, 2020, by 50 percent of the calculated price decline. Payments made using CCC funds will be determined by multiplying 50 percent of the unpriced inventory held on January 15, 2020, by 55 percent of the same price decline used with respect to payments made using CARES Act's funds. The producer will receive one payment consisting of funds made available under the CARES Act and the CCC Charter Act.

For producers of specialty crops (including, but not limited to, almonds, beans, broccoli, sweet corn, lemons, iceberg lettuce, spinach, squash, strawberries, and tomatoes) that realized a 5-percent-or-greater reduction in sales price between the average for the week of January 13–17, 2020, in a comparison with the average for the week of April 6–10, 2020, payments will be based on the grower's sales volume, multiplied by 80 percent of the given crop's price change between mid-January and mid-April 2020. Producers with specialty crops that have been shipped from the farm by April 15 but subsequently spoiled due to loss of marketing channel and were not paid are eligible to apply for up to 30 percent of the crop's sales value of that shipment. The 30 percent was determined assuming the field value of the crop is 60 percent of the sales value; the field value is then multiplied by a 50 percent coverage level. Producers of specialty crop shipments that did not leave the farm or mature crops that remained unharvested by April 15, 2020, are eligible to submit a loss claim for compensation of up to 5.875 percent of the crop's value. The 5.875 percent is calculated as 25 percent coverage of the average price loss across specialty crops for which data are available.[4] (That average price loss is 23.5 percent).

For dairy, cattle, hogs and pigs, and lambs and yearlings, payments will be made in a manner similar to crops—inventory (or sales) of the commodity (hundredweight or number of animals) times the payment rate per unit for the commodity (again, in a comparison of mid-January to mid-April price data). For dairy, CARES Act funds will be used to partially compensate producers for price losses from the first quarter of calendar year 2020. CCC funds will be used to partially compensate for increased marketing and adjustment costs for additional milk production in the second quarter of 2020 associated with COVID–19 disruptions to marketing channels and demand destruction. For hogs and pigs, cattle, and lambs and yearlings, payments using CARES Act funds are based on actual sales between January 15 to April 15, 2020; payments using CCC funds will be based on spring inventories.

USDA will accept CFAP applications starting on May 26, 2020, and payments to eligible producers are expected to be made once applications are processed. Total payments to eligible producers, after accounting for payment limit reductions, are estimated at $16 billion. USDA estimates that payments made using CARES Act funding will total $9.5 billion and based upon funds available to CCC on the date of issuance of this rule, will total $6.5 billion. The payments represent benefits to producers, which is the government cost of CFAP.

USDA will make an initial payment of 80 percent of an eligible 2020 CFAP participant's calculated 2020 CFAP payment. By issuing initial payments, FSA can quickly provide assistance to those eligible participants that immediately apply for assistance while trying to ensure that 2020 CFAP payments do not exceed the $16 billion funding limit to ensure those funds are distributed equitably among all eligible producers. If funds remain available after the initial payment to eligible applicants, USDA will disburse the remainder of available funding not to exceed the $16 billion funding limit and funds may prorated if necessary.

[4] The price data for specialty crops was provided by AMS and represents an average of all units shipped of domestic production, whether conventional or organic. The raw data source for the prices is the AMS Market News Portal, *https://www.ams.usda.gov/market-news/fruits-vegetables.* The prices are for the shipping point if available, or terminal market if not. For any particular crop, shipping point and terminal market prices are not mixed. The list of crops for which AMS has data for domestic production for the time periods of interest is covered by Table 5 in the full cost benefit analysis, which is available on *regulations.gov* in docket FSA–2020–0004.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA, Pub. L. 104–121), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by the Administrative Procedure Act or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because USDA is not required by the Administrative Procedure Act or any other law to publish a proposed rule for this rulemaking initiative.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and because USDA will be making the payments to producers the USDA regulations for compliance with NEPA (7 CFR part 1b).

Although OMB has designated this rule as ''economically significant'' under Executive Order 12866, ''. . . economic or social effects are not intended by themselves to require preparation of an environmental impact statement'' when not interrelated to natural or physical environmental effects (see 40 CFR 1508.14). CFAP was designed to avoid skewing planting decisions. Producers continue to make their planting and production decisions with the market signals in mind, rather than any expectation of what a new USDA program might look like. The discretionary aspects of CFAP (for example, determining AGI and payment limitations) were designed to be consistent with established USDA and CCC programs and are not expected to have any impact on the human environment, as CFAP payments will only be made after the commodity has been produced. Accordingly, the following Categorical Exclusion in 7 CFR part 1b applies: § 1b.3(a)(2), which applies to activities that deal solely with the funding of programs, such as program budget proposals, disbursements, and the transfer or

reprogramming of funds. As such, the implementation of and participation in CFAP do not constitute major Federal actions that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, an environmental assessment or environmental impact statement for this regulatory action, will not be prepared; this rule serves as documentation of the programmatic environmental compliance decision for this Federal action.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials that would be directly affect by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with 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 proposed legislation, and other policy statements or actions 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.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal consultation under Executive Order 13175. If a Tribe requests consultation, the USDA Office of Tribal Relations (OTR) will ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by Congress.

Outside of Tribal consultation, USDA is working with Tribes to provide information about CFAP and other issues. Specifically, to date, USDA held a call with Navajo Nation on Tuesday, May 12, 2020; CFAP was one of the items presented—there were no questions raised about CFAP. OTR will host a listening session between FSA, AMS, and Tribal leaders on Thursday, May 21, 2020, at 3:00 p.m.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies is Coronavirus Food Assistance Program and 10.130.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the following new information collection request that supports CFAP was submitted to OMB for emergency approval. OMB approved the 6-month emergency information collection. A request for comments on the information collection will be included in the NOFA issued subsequent to this rule.

E-Government Act Compliance

USDA is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 9

Agricultural commodities, Agriculture, Disaster assistance, Indemnity payments.

■ For the reasons discussed above, USDA adds part 9 to title 7 of the Code of Federal Regulations to read as follows:

PART 9—CORONAVIRUS FOOD ASSISTANCE PROGRAM

Sec.

9.1 Applicability and administration.
9.2 Definitions.
9.3 Producer eligibility requirements.
9.4 Time and method of application.
9.5 Calculation of payments.
9.6 Eligibility subject to verification.
9.7 Miscellaneous provisions.
9.8 Perjury.

Authority: 15 U.S.C. 714b and 714c; and Division B, Title I, Pub. L. 116–136.

§ 9.1 Applicability and administration.

(a) This part specifies the eligibility requirements and payment calculations for the Coronavirus Food Assistance Program (CFAP). CFAP will provide payments with respect to commodities that have been significantly impacted by the effects of the COVID–19 outbreak. Payments will be made with respect to only commodities produced in the United States; commodities imported into the United States may not be used to determine any payment made under this part.

(b) The program is administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA) with the assistance of the Agricultural Marketing Service (AMS).

(c) The FSA State committee will take any action required by this part that an FSA county committee has not taken. The FSA State committee will also:

(1) Correct, or require an FSA county committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of this part; or

(2) Require an FSA county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to an FSA State or county committee will preclude the FSA Administrator, the Deputy Administrator, or a designee or other such person, from determining any question arising under the programs of this part, or from reversing or modifying any determination made by an FSA State or county committee.

§ 9.2 Definitions.

The following definitions apply to CFAP. The definitions in parts 718 and 1400 of this title apply, except where they conflict with the definitions in this section.

All other cattle means commercially raised or maintained bovine animals not meeting the definition of another category of cattle in this part excluding beefalo, bison, and animals used for dairy production or intended for dairy production.

AMS means USDA's Agricultural Marketing Service.

Application means the CFAP application form.

Aquaculture means only those species as announced in a NOFA.

Cattle means commercially raised or maintained bovine animals, excluding beefalo, bison, and animals used for dairy production or intended for dairy production.

Cattle raised or maintained for breeding purposes means animals commercially raised or maintained for use as either a sire or dam for the production of livestock offspring or lactation.

Commodity means an agricultural commodity produced in the United States and intended to be marketed for commercial production that has been designated as eligible for payments under CFAP.

Crop means non-specialty crops and specialty crops.

Feeder cattle 600 pounds or more means cattle weighing more than 600 pounds but less than the weight of slaughter cattle-fed cattle as defined in this section.

Feeder cattle less than 600 pounds means cattle weighing less than 600 pounds.

First quarter means January, February, and March of 2020.

Foreign entity means a corporation, trust, estate, or other similar organization that has more than 10 percent of its beneficial interest held by individuals who are not:

(1) Citizens of the United States; or

(2) Lawful aliens possessing a valid Alien Registration Receipt Card.

Foreign person means any person who is not a citizen or national of the United States or who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card issued by the United States Citizenship and Immigration Services, Department of Homeland Security.

Hogs means any swine 120 pounds or more.

Lambs and yearlings means all sheep less than 2 years old.

NOFA means a Notice of Funding Availability under this part published in the **Federal Register**.

Non-specialty crop means any of the following crops: Malting barley, canola, corn, upland cotton, millet, oats, sorghum, soybeans, sunflowers, durum wheat, hard red spring wheat, and any crops announced in a NOFA. The term excludes crops intended for grazing.

Pigs means any swine weighing less than 120 pounds.

Producer means a person or legal entity who shares in the risk of producing a crop or livestock and who is entitled to a share in the crop or livestock available for marketing or would have shared had the crop or livestock been produced and marketed. A contract grower who does not own the livestock, will be considered a producer if the contract allows the grower to have risk in the livestock.

Slaughter Cattle—fed cattle means cattle with an average weight in excess of 1,400 pounds which yield average carcass weights in excess of 800 pounds and are intended for slaughter.

Slaughter cattle—mature cattle means culled cattle raised or maintained for breeding purposes, but which were removed from inventory and are intended for slaughter.

Specialty crops means any of the following crops: Almonds; apples; artichokes; asparagus; avocados; beans; blueberries; broccoli; cabbage; cantaloupe; carrots; cauliflower; celery; corn, sweet; cucumbers, eggplant; garlic; grapefruit; kiwifruit; lemons; lettuce, iceberg; lettuce, romaine; mushrooms; onions, dry; onions, green; oranges; papayas; peaches; pears; pecans; peppers, bell type; peppers, other; potatoes; raspberries; rhubarb; spinach; squash; strawberries; sweet potatoes; tangerines; taro; tomatoes; walnuts; watermelons; and any crops for which funds are made available and announced in a NOFA. The term excludes crops intended for grazing.

Unpriced inventory means any production that is not subject to an agreed-upon price in the future through a forward contract, agreement, or similar binding document.

Wool means the fiber sheared from a live sheep and includes, unless noted otherwise, graded and nongraded wool. Graded wool is paid on a clean basis, and ungraded wool is paid on a greasy basis.

§ 9.3 Producer eligibility requirements.

To be eligible for a CFAP payment, a producer must:

(a) Meet all of the requirements in this part;

(b) Be a:

(1) Citizen of the United States;

(2) Resident alien, which for purposes of this part means ''lawful alien'' as defined in part 1400 of this title;

(3) Partnership of citizens of the United States;

(4) Corporation, limited liability company, or other organizational structure organized under State law;

(5) Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304); or

(6) Foreign person or foreign entity who meets all requirements as described in part 1400 of this title; and

(c) Have had a share in the eligible commodity on January 15, 2020, or April 16, 2020, through May 14, 2020.

§ 9.4 Time and method of application.

(a) An application under this subpart must be submitted in person, by mail, email, or facsimile to any FSA county office by the close of business on August 28, 2020.

(b) Failure of an individual, entity, or a member of an entity to submit the following payment limitation and payment eligibility forms within 60-days from the date of signing the CFAP application, may result in no payment or a reduced payment:

(1) A farm operating plan for an individual or legal entity as provided in part 1400 of this title;

(2) Form CCC–901 Member Information for Legal Entities (if applicable);

(3) An average adjusted gross income statement for the 2020 program year for the person or legal entity, including the legal entity's members, partners, or shareholders, as provided in part 1400 of this title; form CCC–941 Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information;

(4) CCC–942 Certification of Income From Farming, Ranching and Forestry Operations (optional); and

(5) A highly erodible land conservation (sometimes referred to elsewhere as HELC) and wetland conservation certification as provided in part 12 of this title (form AD–1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification for CFAP applicant and applicable affiliates).

(c) If requested by USDA, the applicant must provide documentation that:

(1) Establishes the applicant's ability and intent to harvest, transport, and market the commodity for the intended market or crop's expected production in a quantity determined based on the producer's approved yield, expected level of production, or inventory of the livestock, crop, or commodity;

(2) Establishes the applicant's ownership share in the commodity; and

(3) Establishes the applicant's value at risk in the commodity.

§ 9.5 Calculation of payments.

(a) Payments for eligible non-specialty crops will be the sum of:

(1) Unpriced inventory that is harvested but held in inventory as of January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the Coronavirus Aid, Relief, and Economic Stability Act (CARES Act) payment rate in paragraph (h) of this section; and

(2) Unpriced inventory as of January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the Commodity Credit Corporation (CCC) payment rate in paragraph (h) of this section.

(b) Payments for eligible specialty crops will be the sum of:

(1) For specialty crops listed in paragraph (h) of this section that were sold between January 15, 2020, and April 15, 2020, the quantity sold multiplied by the payment rate in column 2 of Table 1 in paragraph (h) of this section;

(2) For specialty crops harvested and shipped but subsequently spoiled due to loss of marketing channels between January 15, 2020, and April 15, 2020, the harvested and shipped quantity that spoiled multiplied by the payment rate in column 3 of Table 1 in paragraph (h) of this section; and

(3) For unpriced specialty crops that did not leave the farm or mature crops that remained unharvested between January 15, 2020 and April 15, 2020 due to loss of marketing channel, the sum of the quantity of crops that did not leave the farm and the quantity of mature crops that remained unharvested, multiplied by the payment rate in column 4 of Table 1 in paragraph (h) of this section.

(c) Payments for cattle will be the sum of the results of the following two calculations:

(1) Cattle sold between January 15, 2020, to April 15, 2020, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) Unpriced cattle inventory between April 16, 2020, to May 14, 2020, multiplied by the CCC payment rate in paragraph (h) of this section.

(d) Payments for hogs and pigs will be equal to the sum of the results of the following two calculations:

(1) Hogs and pigs sold between January 15, 2020, to April 15, 2020, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) Unpriced hog and pig inventory between April 16, 2020, to May 14, 2020, multiplied by the CCC payment rate in paragraph (h) of this section.

(e) Payments for dairy will be equal to the sum of the results of the following two calculations:

(1) First quarter production, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) First quarter production, multiplied by 1.014, multiplied by the CCC payment rate in paragraph (h) of this section.

(f) Payments for lambs and yearlings will be equal to the sum of the results of the following two calculations:

(1) Lambs and yearlings sold between January 15, 2020, to April 15, 2020, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) Unpriced lambs and yearlings in inventory between April 16, 2020, to May 14, 2020, multiplied by the CCC payment rate in paragraph (h) of this section.

(g) Payments for wool are the sum of:

(1) Unpriced inventory on January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the CARES Act payment rate paragraph (h) of this section; and

(2) Unpriced inventory on January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the CCC payment rate in paragraph (h) of this section.

(h) The payment rates in Tables 1 and 2 of this paragraph (h) will be used to calculate CFAP payments:

TABLE 1 TO PARAGRAPH (h)—PAYMENT RATES FOR SPECIALTY CROPS

[Including, but not limited to, the listed commodities]

Commodity	CARES Act payment rate for sales losses ($/lb)	CARES Act payment rate for product that left the farm but spoiled due to loss of marketing channel ($/lb)	CCC Payment rate ($/lb)
Almonds	$0.26	$0.57	$0.11
Apples		0.18	0.03
Artichokes	0.66	0.49	0.10
Asparagus		0.38	0.07
Avocados		0.14	0.03
Beans	0.17	0.16	0.03
Blueberries		0.62	0.12
Broccoli	0.62	0.49	0.10
Cabbage	0.04	0.07	0.01
Cantaloupe		0.10	0.02
Carrots	0.2	0.11	0.02
Cauliflower	0.11	0.31	0.06

TABLE 1 TO PARAGRAPH (h)—PAYMENT RATES FOR SPECIALTY CROPS—Continued

[Including, but not limited to, the listed commodities]

Commodity	CARES Act payment rate for sales losses ($/lb)	CARES Act payment rate for product that left the farm but spoiled due to loss of marketing channel ($/lb)	CCC Payment rate ($/lb)
Celery		0.07	0.01
Corn, sweet	0.09	0.13	0.03
Cucumbers	0.13	0.15	0.03
Eggplant	0.07	0.15	0.03
Garlic		0.85	0.17
Grapefruit		0.11	0.02
Kiwifruit		0.32	0.06
Lemons	0.08	0.21	0.04
Lettuce, iceberg	0.20	0.15	0.03
Lettuce, romaine	0.07	0.12	0.02
Mushrooms		0.59	0.11
Onions, dry	0.01	0.05	0.01
Onions green		0.30	0.06
Oranges		0.14	0.03
Papaya		0.32	0.06
Peaches	0.08	0.32	0.06
Pears	0.08	0.18	0.03
Pecans	0.28	0.93	0.18
Peppers, bell type	0.14	0.22	0.04
Peppers, other	0.15	0.22	0.04
Potatoes		0.04	0.01
Raspberries		1.45	0.28
Rhubarb	0.15	1.03	0.20
Spinach	0.37	0.37	0.07
Squash	0.72	0.39	0.08
Strawberries	0.84	0.72	0.14
Sweet potatoes		0.18	0.04
Tangerines		0.22	0.04
Taro		0.23	0.05
Tomatoes	0.64	0.38	0.07
Walnuts		0.45	0.09
Watermelons		0.02	

TABLE 2 TO PARAGRAPH (h)—PAYMENT RATES FOR NON-SPECIALTY CROPS, DAIRY, AND LIVESTOCK

Commodity	Unit	CARES Act payment rate ($/unit)	CCC payment rate ($/unit)
Barley (malting)	bu	0.34	0.37
Canola	lb	0.01	0.01
Corn	bu	0.32	0.35
Durum wheat	bu	0.19	0.20
Hard red spring wheat	bu	0.18	0.20
Millet	bu	0.31	0.34
Oats	bu	0.15	0.17
Sorghum	bu	0.30	0.32
Soybeans	bu	0.45	0.50
Sunflowers	lb	0.02	0.02
Upland cotton	lb	0.09	0.10
Dairy	cwt	4.71	1.47
Slaughter cattle—mature cattle	head	92	33
Slaughter cattle—fed cattle	head	214	33
Feeder cattle less than 600 pounds	head	102	33
Feeder cattle 600 pounds or more	head	139	33
All other cattle	head	102	33
Pigs	head	28	17
Hogs	head	18	17
Lambs and yearlings	head	33	7
Wool (graded, clean basis)	lb	0.71	0.78
Wool (non-graded, greasy basis)	lb	0.36	0.39

(i) Payments for cattle and hogs will be calculated separately for the following categories:

(1) Slaughter cattle—mature cattle;

(2) Slaughter cattle—fed cattle;

(3) Feeder cattle less than 600 pounds;

(4) Feeder cattle 600 pounds or more;

(5) All other cattle;

(6) Pigs; and

(7) Hogs.

(j)(1) USDA may make payments with respect to other commodities. In order to determine whether other commodities will be included in CFAP, a notice will be issued that will specify the types of market information the public may submit for consideration by USDA. After receipt of the information and the use of other related information available to USDA, a NOFA will specify the other eligible commodities and the manner in which payments will be determined.

(2) Producers that are privately owned aquaculture businesses growing freshwater and saltwater products in controlled environments, including raceways, ponds, tanks, and recirculating systems, extending to all farmed shrimp and salmonids (trout and salmon) are included in CFAP to the extent USDA determines individual types of the products have incurred a decline in prices of 5 percent or more between January 15, 2020, and April 15, 2020. The determination of which species are included will be specified in the NOFA referenced in paragraph (j)(1) of this section.

(k) An initial payment will be issued for 80 percent of each CFAP payment calculated. A final payment will be issued on a date determined by the Secretary, to the extent such funds are available. The total of all CFAP payments made, including all initial and final payments, cannot exceed a total of $9.5 billion for CARES Act funds and $6.5 billion for CCC funds.

§ 9.6 Eligibility subject to verification.

(a) Producers who are approved for participation in CFAP are required to retain documentation in support of their application for 3 years after the date of approval.

(b) Participants receiving CFAP payments or any other person who furnishes such information to USDA must permit authorized representatives of USDA or the Government Accountability Office, during regular business hours, to enter the agricultural operation and to inspect, examine, and to allow representatives to make copies of books, records, or other items for the purpose of confirming the accuracy of the information provided by the participant.

§ 9.7 Miscellaneous provisions.

(a) If a CFAP payment resulted from erroneous information provided by a participant, or any person acting on their behalf, the payment will be recalculated and the participant must refund any excess payment with interest calculated from the date of the disbursement of the payment. Any required refunds must be resolved in accordance with part 3 of this title.

(b) The regulations in parts 11 and 780 of this title apply to determinations made under this part.

(c) Any payment under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity or proceeds from the sale of the commodity. The regulations governing offsets in part 3 of this title do not apply to payments made under this part.

(d) The $900,000 average AGI limitation provisions in part 1400 of this title relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, apply to each applicant for CFAP unless at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry-related activities. The average AGI will be calculated for a person or such legal entity based on the 2016, 2017, and 2018 tax years. If the person or such legal entity's average AGI is below $900,000 or at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry-related activities, the person or legal entity, is eligible to receive payments under this part.

(e)(1) The total amount of CFAP payments that a program applicant who is an individual may receive directly or through the attribution of payments as provided in paragraph (e)(3) of this section is $250,000. The total amount of payments that a program applicant who is a legal entity created under State law may receive is $250,000, except as provided in paragraph (e)(2) of this section. Payments made to a program applicant who is a joint venture or a general partnership are limited to the aggregated amount of payments that individual or legal entity members of the joint venture or general partnership may otherwise receive.

(2)(i) The total amount of CFAP payments a corporation, limited liability company, or a limited partnership may receive is $250,000 unless the owners of the legal entity meet the provisions of paragraphs (e)(2)(ii) and (iii) of this section.

(ii) The total amount of CFAP payments a corporation, limited liability company, or a limited partnership may receive is $500,000 if two different individual owners of the legal entity each provided at least 400 hours of active personal labor or active personal management or combination thereof with respect to the production of 2019 commodities for which an application or applications are made in accordance with this part.

(iii) The total amount of CFAP payments a corporation, limited liability company, or a limited partnership may receive is $750,000 if three different individual owners of the legal entity each provided at least 400 hours of active personal labor or active personal management or combination thereof with respect to the production of 2019 commodities for which an application or applications are made in accordance with this part.

(3) In accordance with § 1400.105 of this title, a CFAP payment made to any legal entity will be attributed to individuals or legal entities with an ownership interest in the legal entity. Payments attributed to a legal entity with an ownership interest in the legal entity will be further attributed as provided in § 1400.105 of this title. If the total amount of CFAP payments made directly or indirectly to an individual or legal entity has met the applicable amounts specified in paragraphs (e)(1) and (2) of this section, the payment to the legal entity will be reduced commensurate with the amount of the ownership interest of the individual or legal entity in the legal entity. CFAP payments will be attributed to individuals and legal entities until the attribution is made only to an individual except the attribution will stop at the fourth level of ownership.

(4) If an individual or legal entity is not eligible to receive CFAP payments due to the individual or legal entity failing to satisfy some other payment eligibility provision such as AGI in or conservation compliance provisions or some other payment eligibility impediment, the payment made either directly or indirectly to the individual or legal entity will be reduced to zero. The amount of the reduction for the direct payment to the applicant will be commensurate with the direct or indirect ownership interest of the ineligible individual or ineligible legal entity. The application of this ineligibility to receive a CFAP payment due to the excessive AGI of an individual or legal entity will stop at the fourth level of ownership.

(f) For the purposes of the effect of a lien on eligibility for Federal programs (28 U.S.C. 3201(e)), USDA waives the

restriction on receipt of funds under CFAP but only as to beneficiaries who, as a condition of the waiver, agree to apply the CFAP payments to reduce the amount of the judgment lien.

(g) In addition to any other Federal laws that apply to CFAP, the following laws apply: 15 U.S.C. 714; 18 U.S.C. 286, 287, 371, 1001; and 31 U.S.C. 1001.

(h) This part applies to applications submitted under CFAP through August 28, 2020, or until funds made available for CFAP are exhausted.

§ 9.8 Perjury.

In either applying for or participating in CFAP, or both, the producer is subject to laws against perjury and any penalties and prosecution resulting therefrom, with such laws including but not limited to 18 U.S.C. 1621. If the producer willfully makes and represents as true any verbal or written declaration, certification, statement, or verification that the producer knows or believes not to be true, in the course of either applying for or participating in CFAP, or both, then the producer is guilty of perjury and, except as otherwise provided by law, may be fined, imprisoned for not more than 5 years, or both, regardless of whether the producer makes such verbal or written declaration, certification, statement, or verification within or without the United States.

Stephen L. Censky,

Vice Chairman, Commodity Credit Corporation, and Deputy Secretary, U.S. Department of Agriculture.

[FR Doc. 2020–11025 Filed 5–20–20; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 1951

[Docket No. RHS–20–CF–0011]

Notification of Direct Loan Payment Deferrals for the Community Facilities Direct Loan Program

Correction

In rule document 2020–08429 beginning on page 22009 in the issue of Tuesday, April 21, 2020, make the following correction:

On page 22009, in the **DATES** section, ''May 12, 2020'' should read ''April 21, 2020''.

[FR Doc. C1–2020–08429 Filed 5–20–20; 8:45 am]

BILLING CODE 1301–00–D

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 121

[Docket Number SBA–2020–0030]

RIN 3245–AH44

Business Loan Program Temporary Changes; Paycheck Protection Program—Treatment of Entities With Foreign Affiliates

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: On April 2, 2020, the U.S. Small Business Administration (SBA) posted an interim final rule announcing the implementation of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act temporarily adds a new program, titled the ''Paycheck Protection Program,'' to the SBA's 7(a) Loan Program. The CARES Act also provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). The PPP is intended to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19). SBA posted additional interim final rules on April 3, 2020, April 14, 2020, April 24, 2020, April 28, 2020, April 30, 2020, May 5, 2020, May 8, 2020, May 13, 2020, and May 14, 2020, and the Department of the Treasury posted an additional interim final rule on April 28, 2020. This interim final rule supplements the previously posted interim final rules by providing guidance on additional eligibility requirements related to entities with foreign affiliates, and requests public comment.

DATES:

Effective date: This rule is effective May 21, 2020.

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

Comment date: Comments must be received on or before June 22, 2020.

ADDRESSES: You may submit comments, identified by number SBA–2020–0030 through the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. SBA will post all comments on *www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please send an email to *ppp-ifr@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

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

SUPPLEMENTARY INFORMATION:

I. Background Information

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

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) (Pub. L. 116–136) to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The Small Business Administration (SBA) received funding and authority through the CARES Act to modify existing loan programs and establish a new loan program to assist small businesses nationwide adversely impacted by the COVID–19 emergency. Section 1102 of the CARES Act temporarily permits SBA to guarantee 100 percent of 7(a) loans under a new program titled the ''Paycheck Protection Program.'' Section 1106 of the CARES Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). On April 24, 2020, the President signed the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139),

which provided additional funding and authority for the PPP.

Under the CARES Act, an entity is eligible for a PPP loan if it is (1) a small business concern, or (2) a business concern, nonprofit organization described in section 501(c)(3) of the Internal Revenue Code, veterans organization described in section 501(c)(19) of the Internal Revenue Code, or Tribal business concern described in section 31(b)(2)(C) of the Small Business Act that employs not more than the greater of 500 employees, or, if applicable, SBA's employee-based size standard for the industry in which the entity operates. Under existing SBA regulations, an entity is generally considered together with its affiliates for purposes of determining the entity's eligibility for SBA loans. *See* 13 CFR 121.301. SBA issued an interim final rule on affiliation (posted April 4, 2020) stating that PPP applicants are subject to the affiliation rules set forth in 13 CFR 121.301. *See* 85 FR 20817 (April 15, 2020). Those rules deem entities to be affiliates based on factors including stock ownership, overlapping management, and identity of interest. Of relevance here, SBA's affiliation rules provide that in determining an entity's number of employees, employees of the entity ''and all of its domestic and foreign affiliates'' are included. As a result, in most cases, a borrower is considered together with its U.S. and foreign affiliates for purposes of determining eligibility for the PPP. Based on that methodology, the borrower application form (SBA Form 2483), which all applicants must complete and submit, includes a certification that the applicant ''employs no more than the greater of 500 or employees or, if applicable, the size standard in number of employees established by the SBA in 13 CFR 121.201 for the Applicant's industry.'' To provide further clarification of this methodology, SBA issued guidance on May 5, 2020 (FAQ 44) stating that an applicant must count all of its employees and the employees of its U.S. and foreign affiliates, absent a waiver of or an exception to the affiliation rules.

Some market participants have indicated that there may be uncertainty regarding whether PPP applicants must include employees of foreign affiliates in their employee counts, because SBA has previously issued guidance stating that an entity is eligible for a PPP loan if it has 500 or fewer employees whose principal place of residence is in the United States. See 85 FR 20811, 20812 (April 15, 2020). As described above, the generally applicable 500-employee size standard is subject to the application of SBA's affiliation rules, as well as numerous other eligibility requirements. *See, e.g.,* 13 CFR 120.110 (listing 18 types of ineligible businesses); SBA Form 2483 (including mandatory applicant representations regarding defaults on previous government loans or guarantees, Federal suspension or debarment, and criminal backgrounds). The reference in SBA guidance to employees whose principal place of residence is in the United States is relevant to a PPP applicant's calculation of payroll for purposes of determining the PPP loan amount and to the calculation of loan forgiveness. The fact that an applicant might be eligible for a PPP loan if it has 500 or fewer U.S. employees does not mean that the applicant is not also subject to the other requirements applicable to the PPP. Instead, an applicant is eligible for a PPP loan only if it meets all applicable eligibility criteria. If an applicant, together with its domestic and foreign affiliates, does not meet the 500-employee or other applicable PPP size standard, it is not eligible for a PPP loan.

II. Comments and Immediate Effective Date

The intent of the Act is that SBA provide relief to America's small businesses expeditiously. This intent, along with the dramatic decrease in economic activity nationwide, provides good cause for SBA to dispense with the 30-day delayed effective date provided in the Administrative Procedure Act. Specifically, it is critical to meet lenders' and borrowers' need for clarity concerning program requirements as rapidly as possible because the last day eligible borrowers can apply for and receive a loan is June 30, 2020.

This interim final rule supplements previous regulations and guidance on an important, discrete issue. The immediate effective date of this interim final rule will benefit lenders so that they can swiftly close and disburse loans to small businesses. This interim final rule is effective without advance notice and public comment because section 1114 of the Act authorizes SBA to issue regulations to implement Title I of the Act without regard to notice requirements. This rule is being issued to allow for immediate implementation of this program. Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule, including section III below. These comments must be submitted on or before June 22, 2020. SBA will consider these comments and the need for making any revisions as a result of these comments.

III. Paycheck Protection Program Additional Eligibility Criteria

Overview

The CARES Act was enacted to provide immediate assistance to individuals, families, and organizations affected by the COVID–19 emergency. Among the provisions contained in the CARES Act are provisions authorizing SBA to temporarily guarantee loans under the PPP. Loans under the PPP will be 100 percent guaranteed by SBA, and the full principal amount of the loans and any accrued interest may qualify for loan forgiveness. Additional information about the PPP is available in interim final rules published by SBA and the Department of the Treasury in the **Federal Register** (85 FR 20811, 85 FR 20817, 85 FR 21747, 85 FR 23450, 85 FR 23917, 85 FR 26321, 85 FR 26324, and 85 FR 27287) and posted on May 8, 2020, May 13, 2020, and May 14, 2020 (85 FR 29845, 85 FR 29842, and 85 FR 29847) (collectively, the PPP Interim Final Rules).

1. Treatment of Foreign Affiliates

Are employees of foreign affiliates included for purposes of determining whether a PPP borrower has more than 500 employees?

Yes. The CARES Act specifies that an entity is eligible for a PPP loan only if it is (1) a small business concern, or (2) a business concern, nonprofit organization described in section 501(c)(3) of the Internal Revenue Code, veterans organization described in section 501(c)(19) of the Internal Revenue Code, or Tribal business concern described in section 31(b)(2)(C) of the Small Business Act that employs not more than the greater of 500 employees, or, if applicable, SBA's employee-based size standard for the industry in which the entity operates. SBA's affiliation regulations provide that to determine a concern's size, employees of the concern ''and all of its domestic and foreign affiliates'' are included. 13 CFR 121.301(f). Therefore, to calculate the number of employees of an entity for purposes of determining eligibility for the PPP, an entity must include all employees of its domestic and foreign affiliates, except in those limited circumstances where the affiliation rules expressly do not apply to the entity.[1] Any entity that, together

[1] Section 7(a)(36)(D)(iv) of the Small Business Act (15 U.S.C. 636(a)(36)(D)(iv), as added by the CARES Act, waives SBA's affiliation rules for (1) any business concern with not more than 500 employees that, as of the date on which the loan

with its domestic and foreign affiliates, does not meet the 500-employee or other applicable PPP size standard is therefore ineligible for a PPP loan.

However, as an exercise of enforcement discretion due to reasonable borrower confusion based on SBA guidance (which was later resolved through a clarifying FAQ on May 5, 2020), SBA will not find any borrower that applied for a PPP loan prior to May 5, 2020 to be ineligible based on the borrower's exclusion of non-U.S employees from the borrower's calculation of its employee headcount if the borrower (together with its affiliates)[2] had no more than 500 employees whose principal place of residence is in the United States. Such borrowers shall not be deemed to have made an inaccurate certification of eligibility solely on that basis. Under no circumstances may PPP funds be used to support non-U.S. workers or operations.

2. Additional Information

SBA may provide further guidance, if needed, through SBA notices that will be posted on SBA's website at *www.sba.gov*. Questions on the Paycheck Protection Program may be directed to the Lender Relations Specialist in the local SBA Field Office. The local SBA Field Office may be found at *https://www.sba.gov/tools/local-assistance/districtoffices*.

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Orders 12866, 13563, and 13771

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

Executive Order 12988

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

Executive Order 13132

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

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

SBA has determined that this rule will not impose new or modify existing recordkeeping or reporting requirements under the Paperwork Reduction Act.

Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the APA or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. Such analysis must address the consideration of regulatory options that would lessen the economic effect of the rule on small entities. The RFA defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). Except for such small government jurisdictions, neither State nor local governments are ''small entities.'' Similarly, for purposes of the RFA, individual persons are not small entities. The requirement to conduct a regulatory impact analysis does not apply if the head of the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The agency must, however, publish the certification in the **Federal Register** at the time of publication of the rule, ''along with a statement providing the factual basis for such certification.'' If the agency head has not waived the requirements for a regulatory flexibility analysis in accordance with the RFA's waiver provision, and no other RFA exception applies, the agency must prepare the regulatory flexibility analysis and publish it in the **Federal Register** at the time of promulgation or, if the rule is promulgated in response to an emergency that makes timely compliance impracticable, within 180 days of publication of the final rule. 5 U.S.C. 604(a), 608(b). Rules that are exempt from notice and comment are also exempt from the RFA requirements, including conducting a regulatory flexibility analysis, when among other things the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. SBA Office of Advocacy Guide: How to Comply with the Regulatory Flexibility Act, Ch.1. p.9. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

Jovita Carranza,

Administrator.

[FR Doc. 2020–10967 Filed 5–19–20; 11:15 am]

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is disbursed, is assigned a North American Industry Classification System code beginning with 72; (2) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration; and (3) any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681). SBA also applies affiliation exceptions to certain categories of entities. 13 CFR 121.103(b).

[2] For purposes of this safe harbor, a borrower must include its affiliates to the extent required under the interim final rule on affiliates, 85 FR 20817 (April 15, 2020). SBA's affiliation exceptions in 13 CFR 121.103(b) apply to the PPP.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0204; Project Identifier 2018–CE–042–AD; Amendment 39–21129; AD 2020–11–04]

RIN 2120–AA64

Airworthiness Directives; Learjet Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Learjet Inc. Model 60 airplanes. This AD was prompted by a report of a reverse thrust command accelerating the airplane instead of decelerating the airplane. The acceleration with reverse thrust commanded occurred when the thrust reverser doors were in the stowed position instead of the deployed position. This AD requires installing a thrust reverser (T/R) Voice Command Warning System (VCWS) to alert the crew of a T/R malfunction. The FAA is

issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 25, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 25, 2020.

ADDRESSES: For service information identified in this final rule, contact Learjet Inc., MS 53, P.O. Box 7707, Wichita, Kansas 67277–7707; telephone: (toll free) 1–866–538–1247; (514) 855–2999; internet: *https://my.businessaircraft.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0204.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0204; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is Docket Operations, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: James Galstad, Aerospace Engineer, Wichita ACO Branch, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4135; fax: (316) 946–4107; email: *james.galstad@faa.gov* or *Wichita-COS@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Learjet Inc. Model 60 airplanes. The NPRM published in the **Federal Register** on May 13, 2019 (84 FR 20823). The NPRM was prompted by a report of a high-speed rejected takeoff involving a Learjet Model 60 airplane that occurred when all four main landing gear (MLG) tires blew out during the takeoff roll. The tires blew out due to internal heat damage consistent with under-inflation, overloading, or a combination of both. Subsequently, damage from tires caused damage to various components, including the MLG squat switches, brake hydraulic tubes, wheel speed sensor wiring, and anti-skid components. In the event of squat switch wiring failures, thrust reverser operation can be adversely affected. During the subject accident, forward thrust occurred when the thrust reverser doors stowed due to the failure, and at the same time the crew was still commanding reverse thrust. Squat switch wiring can also be damaged by other external factors, such as bird strikes or deer strikes.

The FAA considers this AD to be the third of three related ADs that collectively address unsafe conditions that might result from damage to critical components on the landing gear or in the wheel well that affect the braking, spoiler, and thrust reverser systems. AD 2010–11–11, Amendment 39–16316 (75 FR 32255, June 8, 2010) was issued to prevent tire failure, and AD 2013–13–09, Amendment 39–17497 (78 FR 39574, July 2, 2013) was issued to prevent failure of the braking system or adverse operation of the spoiler and reverse thruster system due to external damage, particularly from tire failure, which could result in loss of control of the airplane.

The NPRM proposed to require installing a T/R VCWS to alert the crew of a T/R malfunction. The FAA is issuing this AD to mitigate failure of the engine thrust reverser system. The unsafe condition, if not addressed, could result in the airplane overrunning the runway or a runway excursion.

Comments

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

Support for the NPRM

The National Transportation Safety Board (NTSB) and Damian Palaich expressed support for the NPRM.

Request To Withdraw the NPRM

Charles Perrigoue requested that the NPRM be withdrawn. The commenter noted that modern aircraft designs have shifted away from a multitude of aural alarms and warnings and that most modern business jets and airline aircraft suppress alarms during critical phases of flight. The commenter stated there is no nexus between the proposed AD actions and the precipitating Learjet Model 60 accident, as the pilot correctly recognized and reacted to the thrust reverser malfunction.

The FAA disagrees with the commenter's request. The design change required by paragraph (g) of this AD incorporates a direct aural voice command for a rapid effective response and design features to minimize faulty voice commands. The FAA's evaluation concludes that the installation of the T/R VCWS required by this AD will effectively mitigate the identified unsafe condition and prevent future scenarios similar to the September 19, 2008, accident involving a Learjet Model 60 airplane. The T/R VCWS is monitoring the thrust reversers and providing a voice command, when needed, which will enable a faster pilot response to decelerate the airplane. The FAA has not changed this AD in this regard.

Request To Incorporate a Solution That Is Not Reliant on Crew Action

An anonymous commenter stated the proposed AD does not eliminate the root cause of the unsafe condition. The commenter further suggested that relying on pilot response to address a catastrophic hazard is not always valid. The commenter stated that a design solution is available that would eliminate the uncontrollable high thrust condition. The commenter asserted that the FAA's proposed AD contradicts its guidance in draft advisory circular (AC) AC 25.901–2X. The acceptable design solution suggested by the commenter is a similar installation on another aircraft identified in the NTSB investigation report (NTSB/AAR–10/02) and addressed through AD 2016–13–13, Amendment 18577 (81 FR 44494, July 8, 2016) (''AD 2016–13–13''). The commenter noted that AD 2016–13–13 requires installation of a control system modification that, following a single failure cause, prevents uncontrolled high failure thrust from occurring and prevents the engine from accelerating above idle. The commenter further stated that Draft AC 25.901–2X identified that assuming a crew response to address a hazard is not proper.

The FAA infers that the commenter is requesting corrective action that does not rely on crew action, similar to the modification required by AD 2016–13–13. The FAA acknowledges that Draft AC 25.901–2X suggests that relying on pilot response to address a catastrophic hazard is not always feasible; however, Draft AC 25.901–2X is not current agency guidance because it has not yet been finalized and issued. In addition, the FAA has determined that in some cases, including this one, relying on pilot response to address a hazard is

appropriate. The installation of a T/R VCWS and performance of a functional test, as required by paragraph (g) of this AD, adequately addresses the unsafe condition on the affected airplanes. The T/R VCWS monitors the thrust reversers and provides voice command when needed, which will enable a faster pilot response to decelerate the airplane. However, if the FAA obtains and analyzes additional data that indicates the unsafe condition has not been adequately addressed by this AD, the FAA will consider further rulemaking. The FAA has not changed this AD in this regard.

Request To Shorten the Compliance Time

The NTSB requested that the FAA shorten the proposed compliance time of 1,200 hours time-in-service or 48 months, because of how much time has passed since the NTSB's July 17, 2009, safety recommendation regarding this issue.

The FAA disagrees with the commenter's request. Based on the FAA's risk assessment, the FAA has determined that the proposed compliance time in this AD is adequate to address the unsafe condition. In developing an appropriate compliance time for this action, the agency considered the urgency associated with the unsafe condition and the practical aspects of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected owners/operators. The FAA has not changed this AD in this regard.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Learjet 60 Service Bulletin SB 60–78–9, dated June 25, 2018. This service information contains procedures for installing a T/R VCWS to alert the pilot of a T/R malfunction. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 289 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install a T/R VCWS	20 work-hours × $85 per hour = $1,700	$28,274	$29,974	$8,662,486

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–11–04 Learjet Inc.: Amendment 39–21129; Docket No. FAA–2019–0204; Project Identifier 2018–CE–042–AD.

(a) Effective Date

This AD is effective June 25, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Learjet Inc. Model 60 airplanes, serial numbers 60–001 through 60–430 inclusive, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 78, Engine Exhaust.

(e) Unsafe Condition

This AD was prompted by a report of a reverse thrust command accelerating the airplane instead of decelerating the airplane because the thrust reverser doors were stowed instead of deployed. The FAA is

issuing this AD to mitigate failure of the engine thrust reverser system. The unsafe condition, if not addressed, could result in the airplane overrunning the runway or a runway excursion.

(f) Compliance

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

(g) Install a Thrust Reverser Voice Command Warning System

Within the next 1,200 hours time-in-service or within the next 48 months after June 25, 2020 (the effective date of this AD), whichever occurs first, install a Thrust Reverser Voice Command Warning System and perform a functional test in accordance with sections 3.A. through 3.C. of the Accomplishment Instructions in Bombardier Learjet 60 Service Bulletin SB 60–78–9, dated June 25, 2018.

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

For more information about this AD, contact James Galstad, Aerospace Engineer, Wichita ACO Branch, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4135; fax: (316) 946–4107; email: *james.galstad@faa.gov* or *Wichita-COS@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Bombardier Learjet 60 Service Bulletin SB 60–78–9, dated June 25, 2018.

(ii) [Reserved]

(3) For service information identified in this AD, contact Learjet Inc., MS 53, P.O. Box 7707, Wichita, Kansas 67277–7707; telephone: (toll free) 1–866–538–1247; (514) 855–2999; internet: *https://my.businessaircraft.bombardier.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued on May 15, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–10915 Filed 5–20–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0026; Product Identifier 2018–SW–052–AD; Amendment 39–21127; AD 2020–11–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters. This AD requires revising the Rotorcraft Flight Manual (RFM) for your helicopter and either installing placards or removing the hoist arm. This AD was prompted by a failure of a right-hand (RH) side lateral sliding plug door (sliding door) to jettison. The actions of this AD are intended to address an unsafe condition on these products.

DATES: This AD is effective June 25, 2020.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of June 25, 2020.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0026.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0026; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any service information that is incorporated by reference, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kristin Bradley, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *kristin.bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On February 12, 2020, at 85 FR 7894, the **Federal Register** published the FAA's notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters with a hoist arm and with RH sliding door reinforced bracket modification (MOD) 0726841 installed. The NPRM proposed to require revising the RFM for your helicopter by adding emergency and normal procedures and installing placards to require using the normal door handle instead of the jettison handle for the RH side sliding door. Alternatively, the NPRM proposed to allow removing the hoist arm instead of installing the placards. The proposed requirements were intended to prevent interference between the hoist arm and the reinforced bracket, which results in failure of the sliding door to jettison, and could prevent helicopter occupants from evacuating the helicopter during an emergency.

The NPRM was prompted by EASA AD No. 2018–0140–E, dated June 29, 2018 (EASA AD 2018–0140–E), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters (formerly Eurocopter, Eurocopter France, Aerospatiale) Model AS 332 C, AS 332 C1, AS 332 L, AS 332 L1, AS 332 L2, and EC 225 LP helicopters. EASA

advises that during a jettison test of the RH side sliding door, the sliding door became blocked between the hoist, airframe, and access step. Interference was identified between the hoist arm and the sliding door median fitting (reinforced bracket). EASA identifies the reinforced bracket as Airbus Helicopter MOD 0726841, which was required by EASA AD No. 2015–0167, dated August 12, 2015. EASA states that this condition could prevent jettisoning of the RH sliding door in an emergency, subsequently obstructing evacuation, and possibly resulting in injury to occupants. To correct this unsafe condition, EASA AD 2018–0140–E requires removing the hoist arm, or alternatively revising the applicable RFM and installing placards to specify using the normal door handle instead of the jettison handle for the RH side sliding door.

EASA states that Airbus Helicopters is developing a modification to eliminate the interference between the hoist arm and the reinforced bracket. As a result, EASA considers its AD an interim action and states that further AD action may follow.

Comments

After the NPRM was published, the FAA received comments from one commenter. However, the comments addressed neither the proposed actions nor the determination of the cost to the public. Therefore, the FAA has made no changes based on the comments.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is issuing this AD after evaluating all information provided by EASA, reviewing the relevant information, considering the comments received, and determining the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Interim Action

The FAA considers this AD to be an interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA might consider additional rulemaking.

Differences Between This AD and the EASA AD

The EASA AD requires either removing the hoist arm or prohibiting use of the RH sliding door jettison handle by revising the RFM and installing placards. This AD requires revising the applicable RFM for your helicopter regardless of whether the hoist arm is removed.

Related Service Information Under 1 CFR Part 51

Airbus Helicopters has co-published as one document Emergency Alert Service Bulletin (EASB) No. 01.00.89, Revision 1, dated June 28, 2018 (EASB 01.00.89), for Model AS332-series helicopters; EASB No. 04A014, Revision 1, dated June 28, 2018 (EASB 04A014), for Model EC225 helicopters; and EASB No. 01.00.52, Revision 1, dated June 28, 2018, for non-FAA type certificated Model AS532 helicopters (EASB 01.00.52). EASBs 01.00.89 and 04A014 are incorporated by reference in this AD. EASB 01.00.52 is not incorporated by reference in this AD.

This service information provides pages to add to the emergency and normal procedures sections of the RFM, and specifies either removing the hoist arm or installing placards that require using the normal door handle instead of the jettison handle for the RH side sliding door. This service information further allows installing the placards during each installation of the hoist arm and removing the placards with each removal of the hoist arm.

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

Other Related Service Information

Airbus Helicopters has issued Service Bulletin (SB) No. AS332–52.00.43 for Model AS332C, AS332C1, AS332L, AS332L1, and AS332L2 helicopters and SB No. EC225–52–008 for Model EC225LP helicopters, both Revision 0 and dated June 23, 2015. This service information contains procedures for installing the reinforced bracket identified as MOD 0726841.

Costs of Compliance

The FAA estimates that this AD affects 36 helicopters of U.S. Registry. Labor costs are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

Revising the RFM for your helicopter takes about 1 work-hour for an estimated cost of $85 per helicopter or $3,060 for the U.S. fleet.

Installing the placards takes about 1 work-hour for an estimated cost of $85 per helicopter or $3,060 for the U.S. fleet. Alternatively, removing the hoist arm takes about 1 work-hour for an estimated cost of $85 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–11–02 Airbus Helicopters: Amendment 39–21127; Docket No. FAA–2020–0026; Product Identifier 2018–SW–052–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS332C, AS332C1, AS332L, AS332L1, AS332L2, and EC225LP helicopters, certificated in any category, with a hoist arm and with right-hand (RH) side lateral sliding plug door (sliding door) reinforced bracket modification (MOD) 0726841 installed.

Note 1 to paragraph (a) of this AD: Airbus Helicopters reinforced bracket MOD 0726841 may also be identified as sliding door median fitting reinforcement MOD 07.26841.

(b) Unsafe Condition

This AD defines the unsafe condition as interference between the hoist arm and the reinforced bracket resulting in failure of the sliding door to jettison. This condition could prevent helicopter occupants from evacuating the helicopter during an emergency.

(c) Effective Date

This AD becomes effective June 25, 2020.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 10 hours time-in-service:

(i) Revise the Rotorcraft Flight Manual for your helicopter by inserting the Emergency Procedures page and the Normal Procedures page applicable to your helicopter model and configuration from Appendix 4.C. Flight Manual of Airbus Helicopters Emergency Alert Service Bulletin (EASB) No. 01.00.89, Revision 1, dated June 28, 2018 (EASB 01.00.89), or Airbus Helicopters EASB No. 04A014, Revision 1, dated June 28, 2018 (EASB 04A014). Inserting a different document with information identical to that in Appendix 4.C. Flight Manual of EASB 01.00.89 or EASB 04A014 is acceptable for compliance with the requirements of this paragraph.

(ii) Cover existing placards for each RH sliding door in accordance with Appendix 4.B. Masking Tapes and Labels (RH lateral sliding door) of EASB 01.00.89 or EASB 04A014.

(iii) Install new placards in accordance with Appendix 4.A. Labels and Appendix 4.B. Masking Tapes and Labels (RH lateral sliding door) of EASB 01.00.89 or EASB 04A014.

(2) After complying with paragraph (e)(1) of this AD, each time the hoist arm is removed from the helicopter, you may remove the markings and placards that are required by paragraphs (e)(1)(ii) and (iii) of this AD. Before the hoist arm is re-installed, you must re-install the markings and placards that are required by paragraphs (e)(1)(ii) and (iii) of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Kristin Bradley, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(g) Additional Information

(1) Airbus Helicopters Service Bulletin (SB) No. AS332–52.00.43 and SB No. EC225–52–008, both Revision 0 and dated June 23, 2015, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) No. 2018–0140–E, dated June 29, 2018. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2020–0026.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 5200, Doors.

(i) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Emergency Alert Service Bulletin (EASB) No. 01.00.89, Revision 1, dated June 28, 2018.

(ii) Airbus Helicopters EASB No. 04A014, Revision 1, dated June 28, 2018.

Note 2 to paragraph (i)(2): Airbus Helicopters EASB Nos. 01.00.89 and 04A014, both Revision 1 and dated June 28, 2018, are co-published as one document along with Airbus Helicopters EASB No. 01.00.52, Revision 1, dated June 28, 2018, which is not incorporated by reference in this AD.

(3) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110.

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

Issued on May 15, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–10936 Filed 5–20–20; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2020–0016]

RIN 0960–AI48

Extension of Expiration Dates for Three Body System Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending the expiration dates of the following body systems in the Listing of Impairments (listings) in our regulations: Low Birth Weight and Failure to Thrive, Endocrine Disorders, and Cancer (Malignant Neoplastic Diseases). We are making no other revisions to these body systems in this final rule. This extension ensures that we will continue to have the criteria we need to evaluate impairments in the affected body systems at step three of the sequential evaluation processes for initial claims and continuing disability reviews.

DATES: This final rule is effective on May 21, 2020.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Director, Office of Medical Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020.

For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

We use the listings in appendix 1 to subpart P of part 404 of 20 CFR at the third step of the sequential evaluation process to evaluate claims filed by adults and children for benefits based on disability under the title II and title XVI programs.[1] 20 CFR 404.1520(d), 416.920(d), 416.924(d). The listings are in two parts: Part A has listings criteria for adults and Part B has listings criteria for children. If you are age 18 or over, we apply the listings criteria in Part A when we assess your impairment or combination of impairments. If you are under age 18, we first use the criteria in Part B of the listings when we assess your impairment(s). If the criteria in Part B do not apply, we may use the criteria in Part A when those criteria consider the effects of your impairment(s). 20 CFR 404.1525(b), 416.925(b).

Explanation of Changes

In this final rule, we are extending the dates on which the listings for the following three body systems will no longer be effective as set out in the following chart:

Listing	Current expiration date	Extended expiration date
Low Birth Weight and Failure to Thrive (100.00)	June 12, 2020	August 12, 2022.
Endocrine Disorders (9.00/109.00)	June 26, 2020	August 12, 2022.
Cancer (Malignant Neoplastic Diseases) (13.00/113.00).	July 20, 2020	August 12, 2022.

We continue to revise and update the listings on a regular basis, including those body systems not affected by this final rule.[2] We intend to update the three listings affected by this final rule as necessary based on medical advances as quickly as possible, but may not be able to publish final rules revising these listings by the current expiration dates. Therefore, we are extending the expiration dates listed above.

Regulatory Procedures

Justification for Final Rule

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in promulgating regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final regulation. The APA provides exceptions to the notice-and-comment requirements when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We determined that good cause exists for dispensing with the notice and public comment procedures. 5 U.S.C. 553(b)(B). This final rule only extends the date on which the three body system listings will no longer be effective. It makes no substantive changes to our rules. Our current regulations[3] provide that we may extend, revise, or promulgate the body system listings again. Therefore, we determined that opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). We are not making any substantive changes to the listings in these body systems. Without an extension of the expiration dates for these listings, we will not have the criteria we need to assess medical impairments in the three body systems at step three of the sequential evaluation processes. We therefore find it is in the public interest to make this final rule effective on the publication date.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the requirements for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB did not review it. We also determined that this final rule meets the plain language requirement of Executive Order 12866.

Regulatory Flexibility Act

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Executive Order 13771

This regulation does not impose novel costs on the public and as such is considered an exempt regulatory action under E.O. 13771.

Paperwork Reduction Act

This final rule only extends the date for the medical listings cited above, but does not create any new or affect any existing collections, or otherwise change any content of the currently published rules. Accordingly, it does not impose any burdens under the Paperwork Reduction Act, and does not require further OMB approval.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

The Commissioner of the Social Security Administration, Andrew Saul, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for

[1] We also use the listings in the sequential evaluation processes we use to determine whether a beneficiary's disability continues. See 20 CFR 404.1594, 416.994, and 416.994a.

[2] We last updated the Low Birth Weight and Failure to Thrive listing on April 13, 2015 (80 FR 19522) and Cancer (Malignant Neoplastic Diseases) listing on May 20, 2015 (80 FR 28821). We last extended the listing for the Endocrine Disorders body system on May 22, 2018 (83 FR 23579).

[3] See the first sentence of appendix 1 to subpart P of part 404 of 20 CFR.

purposes of publication in the **Federal Register**.

Faye I. Lipsky,

Federal Register Liaison, Office of Legislative and Congressional Affairs, Social Security Administration.

For the reasons set out in the preamble, we are amending appendix 1 to subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a) and (h)–(j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a) and (h)–(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by revising items 1, 10, and 14 of the introductory text before Part A to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

1. Low Birth Weight and Failure to Thrive (100.00): August 12, 2022.

* * * * *

10. Endocrine Disorders (9.00 and 109.00): August 12, 2022.

* * * * *

14. Cancer (Malignant Neoplastic Diseases) (13.00 and 113.00): August 12, 2022.

* * * * *

[FR Doc. 2020–10506 Filed 5–20–20; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2017–0462; FRL–10008–35–Region 5]

Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Indianapolis Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In accordance with the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is redesignating the Indianapolis, Indiana area from nonattainment to attainment for the 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). The area is comprised of Perry, Wayne, and Center Townships in Marion County, Indiana. EPA is also approving, as a revision to the Indiana State Implementation Plan (SIP), Indiana's maintenance plan for this area. EPA proposed to approve Indiana's redesignation request and maintenance plan on April 30, 2019 and received two public comment submissions.

DATES: This final rule is effective on May 21, 2020.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2017–0462. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID 19. We recommend that you telephone Mary Portanova at (312) 353–5954 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@epa.gov.*

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 being addressed by this document?
II. What comments did we receive on the proposed action and what are EPA's responses to those comments?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is being addressed by this document?

On April 30, 2019 (84 FR 18195), EPA proposed to redesignate the Indianapolis SO_2 nonattainment area to attainment of the 2010 SO_2 NAAQS. The Indianapolis SO_2 nonattainment area is comprised of Perry, Wayne, and Center Townships in Marion County, Indiana. An explanation of the CAA requirements for redesignation, a detailed analysis of Indiana's July 10, 2017 redesignation request, and a discussion of EPA's reasons for proposing to redesignate were provided in the notice of proposed rulemaking (NPRM) and will not be restated here.

II. What comments did we receive on the proposed action and what are EPA's responses to those comments?

The public comment period for EPA's proposed redesignation closed on May 30, 2019. EPA received two public comment submissions, which are addressed below.

Comment: The Indiana Department of Environmental Management (IDEM) commented that it supported the proposed redesignation. IDEM also commented that EPA's proposed redesignation omitted Center Township from its description of the Indianapolis SO_2 nonattainment area and requested that this error be corrected.

EPA Response: EPA affirms its intent to approve the redesignation of the entire Indianapolis SO_2 nonattainment area, which includes Center Township, Perry Township, and Wayne Township in Marion County. Two facilities addressed in EPA's April 30, 2019 proposal are located in Center Township: Belmont Advanced Wastewater Treatment Plant (formerly Indianapolis Sludge Incinerator), and the Citizen's Thermal-Perry K steam generation plant. The April 30, 2019 proposal discussed the permanent and enforceable SO_2 emission reductions which have occurred at these two facilities. The enforceable requirements for these facilities, adopted into the SIP at 326 IAC 7–4–2.1, include new controls at the Belmont Advanced Wastewater Treatment Plant and an enforceable change from coal to natural gas as fuel for Citizen's Thermal-Perry K. EPA finds that the redesignation requirements for Center Township have been met, and therefore, EPA intends to include Center Township in the final redesignation action for the Indianapolis SO_2 nonattainment area.

Comment: A second commenter stated that Indiana is subject to a SIP call issued under CAA section 110(k)(5), and that EPA may not redesignate the Indianapolis area because ''the state must have an approved SIP under section 110(k).'' The commenter contends that the Indiana SIP provision covered by the SIP call is generally

applicable throughout the State, and unlawfully allows exemptions from emission limits during periods of malfunction. The commenter states that this provision creates a risk that Indiana sources could cause violations of the NAAQS. Accordingly, the commenter contends that EPA ''cannot'' approve any redesignation requests for Indiana ''until the state addresses the substantial inadequacy identified by EPA in the SIP call.''

EPA Response: As an initial matter, although the commenter does not specifically identify which statutory provision pertaining to redesignation is at issue, we assume for purposes of our response that the commenter was referring to CAA section 107(d)(3)(E)(ii), which requires that ''the Administrator has fully approved the applicable implementation plan for the area under section [110(k) of the CAA].'' We disagree that a state being subject to an outstanding SIP call under section 110(k)(5) automatically means that CAA section 107(d)(3)(E)(ii) cannot be met, and that, as commenter avers, *any* nonattainment area in the state is subsequently barred from being redesignated to attainment.

As background, we believe the commenter is referring to the startup, shutdown, and malfunction (SSM) SIP Call, an action EPA took on June 12, 2015 regarding how various SIP provisions treat excess emissions during periods of SSM. *See* 80 FR 33840. With respect to Indiana, EPA determined in the SSM SIP call that 326 IAC 1–6–4(a)—a provision EPA first approved into the SIP in 1984—was ''substantially inadequate to meet CAA requirements.'' *Id.* at 33966. IDEM has submitted a SIP amendment to revise 326 IAC 1–6–4(a) and EPA is still evaluating that submittal. *See* Letter from Keith Baugues, Assistant Commissioner, IDEM Office of Air Quality, to Robert A. Kaplan, Acting Regional Administrator, EPA Region 5 (January 31, 2017) (EPA–R05–OAR–2017–0462).

For the reasons given below, we do not believe the SIP call for SIP rule 326 IAC 1–6–4(a) precludes the Indianapolis nonattainment area's redesignation to attainment for the 2010 SO_2 NAAQS. First, a SIP call under section 110(k)(5) initiates a schedule for revising the *presently approved SIP;* it does not undo the SIP's status as ''fully approved.'' Rather, it conveys the Administrator's finding that the approved SIP has substantial inadequacies that must be revised and establishes a separate pathway for those revisions to occur. Until EPA approves a SIP revision, the presently approved SIP continues to apply and continues to be ''fully approved.'' As stated in EPA's longstanding interpretation of the redesignation provision, ''An area cannot be redesignated if a required element of its plan is the subject of a *disapproval;* a *finding of failure to submit* or to *implement the SIP;* or *partial, conditional,* or *limited approval.* However, this does not mean that earlier issues with regard to the SIP will be reopened. Regions should not reconsider those things that have already been approved. . . .'' Memorandum from John Calcagni, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' (September 4, 1992) (''Calcagni Memo'') at 3. *See also Gen. Motors Corp.* v. *United States,* 496 U.S. 530, 540 (1990) (''the approved SIP is the applicable implementation plan during the time a SIP revision proposal is pending'') (citing numerous cases); *Southwestern Pa. Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998) (affirming EPA's interpretation in the Calcagni Memo). Notably absent from the list of CAA section 110 provisions in the Calcagni Memo that would bar EPA from finding that a SIP was fully approved—including disapproval or partial approval under section 110(k)(3), a finding of failure to submit under section 110(c)(1)(A), and conditional approval under section 110(k)(4)—is an action under the SIP call provision in section 110(k)(5). We therefore do not agree with the commenter that being subject to a SIP call bars Indiana from seeking redesignation for every nonattainment area in its state.

Moreover, to the extent that the commenter is asserting that the existence of an SSM provision in Indiana's SIP could lead to violations, and thereby preclude redesignation, we disagree. The specific SSM provision implicated in the SIP call in 326 IAC 1–6–4(a) addresses malfunctions that result in excess emissions. Under the State's maintenance plan, the State commits to enforce all measures necessary to maintain the 2010 SO_2 NAAQS, which would include ensuring that malfunctions affecting those measures are remedied. The State also commits to investigate and take action if significant increases in ambient SO_2 levels in a redesignated area occur, so as to ensure continuing maintenance of the NAAQS. Therefore, EPA finds that Indiana's maintenance plan can address malfunctions which may affect a redesignated area.

The SIP provision at 326 IAC 1–6–4(a) has no bearing on Indianapolis's ability to attain and maintain the 2010 SO_2 NAAQS. In its air quality modeling showing attainment in Indianapolis, as cited in the April 30, 2019 proposed redesignation, IDEM identified six major sources of SO_2 as the main contributors to ambient SO_2 concentrations in Indianapolis, and applied emission reductions to them to provide for attainment of the 2010 SO_2 NAAQS. SIP rule 326 IAC 1–6–4(a) *does not apply to those major sources;* it applies only to non-major sources whose potential emissions are so small that their sole permitting requirement is either a registration permit or minor source permit under either 326 IAC 2–5.1 or 326 IAC 2–6.1, respectively. By contrast, the six major sources of SO_2 are subject to the permanent, enforceable SO_2 emission limitations codified at 326 IAC 7–4–2.1, a rule that has been fully approved into the Indiana SIP.[1] They also have major source operating permits issued by IDEM pursuant to rules approved by EPA under title V of the CAA and 40 CFR part 70, and those permits incorporate the SIP limits. The permanent and enforceable SO_2 emission reductions at those six sources—which Indiana demonstrated will provide for attainment in Indianapolis—are not affected in any way by 326 IAC 1–6–4(a). EPA's finding here is consistent with prior redesignation actions. *See, e.g.,* 79 FR at 55649, the September 17, 2014 final redesignation of the Phoenix-Mesa area (redesignating an area, notwithstanding the existence of SSM provisions, where ''all of the specific control measures relied upon by the state for numeric credit for attainment and maintenance planning purposes, with very minor exceptions, apply to'' sources not impacted by those SSM provisions).

EPA's finding is also consistent with another finding in the September 17, 2014 final redesignation of the Phoenix-Mesa area, which concludes that the emissions of the sources in that action which were impacted by SSM provisions constituted such a small percentage of the inventory that they were unlikely to lead to violations. For the Indianapolis area, the total 2015 attainment year SO_2 inventory is 15,312 tons per year (tpy). The six major sources contributed a total of 14,967 tpy. The emission inventory included an additional 176 tpy in point source emissions that was not attributed to the six major sources. That 176 tpy of emissions represents only 1.1 percent of the total attainment inventory. Indiana's attainment year inventory did not

[1] As discussed below, the commenter appears to have been mistaken about the status of 326 IAC 7–4–2.1. That provision was approved into Indiana's SIP on March 22, 2019 (84 FR 10692), prior to EPA's April 30, 2019 proposal to redesignate the Indianapolis nonattainment area.

specify the individual sources whose emissions made up the 176 tpy, but if that entire total was assumed to be emitted by a set of small SO_2 sources subject to 326 IAC 1–6–4(a), then this is the maximum portion of the attainment emission inventory which could potentially be put at risk by the SIP call provision. As noted in the April 30, 2019 proposed redesignation, Indiana's modeled attainment demonstration gave a final ambient air quality result, including background, of 191.1 micrograms per cubic meter, which is equivalent to 73 parts per billion (ppb), or 97 percent of the standard. Even if all the sources subject to 326 IAC 1–6–4(a) released excess SO_2 emissions during malfunctions, we expect that the Indianapolis area would still meet the 2010 SO_2 NAAQS. The current monitored design value for the Indianapolis area (covering the three-year period 2016–2018) is 8 ppb, which is 11 percent of the 2010 SO_2 NAAQS, so the risk of malfunctions related to the SSM SIP call rule causing a monitored violation is very low.

EPA concludes that because the SIP call rule only applies to sources emitting a very small percentage of the total SO_2 emissions in the Indianapolis area, the risk suggested by the commenter that the SIP call provision could lead to violations of the 2010 SO_2 NAAQS is very low, and therefore the existence of that SIP provision does not undermine or preclude the approval of Indiana's redesignation request for the Indianapolis area.

Comment: EPA has not approved all aspects of Indiana's infrastructure SIP under section 110 of the CAA, even though an area must meet ''all applicable requirements for the area under section 110 and Part D'' before being redesignated. EPA thus ''cannot'' approve any redesignation request for Indiana until the state fully addresses all infrastructure requirements under CAA section 110, including interstate transport and visibility. The commenter specifically cited ''the interstate transport prongs 1 and 2 of 110(a)(2)(D)(i)(I), prong 3 for visibility, and 110(a)(2)(J) for visibility.''

EPA Response: EPA does not agree that we are precluded from approving any redesignation for any nonattainment area in the state of Indiana until the state has met all CAA section 110 infrastructure requirements. CAA section 107(d)(3)(E)(v) states that EPA may not redesignate a nonattainment area to attainment unless ''the State containing such area has met all requirements applicable to the area under section [110] of this title and part D of this subchapter.'' The statute does not specify how EPA is to determine which requirements in section 110 and Part D are ''applicable'' for purposes of evaluating a state's redesignation request, and courts have agreed that this provision is ambiguous. *See Wall* v. *EPA,* 265 F.3d 426, 439 (6th Cir. 2001) (''Although ''applicable'' could be interpreted as limiting only the geographical area to which the statutory requirements must apply, it can also be interpreted as limiting the number of actual requirements within CAA section 110 and Part D that apply to a given area.''); *see also Sierra Club* v. *EPA,* 375 F.3d 537, 541 (7th Cir. 2004) (finding the term ''applicable'' in CAA section 107(d)(3)(E)(ii) to be ''a protean word that takes color from context; it lacks a single, enduring meaning'').

Commenter's interpretation of that provision would suggest that EPA is precluded from redesignating *any* area in the state, for *any* pollutant, until *every* section 110 infrastructure requirement has been met by the state and approved into the SIP by EPA. We think this interpretation of CAA section 107(d)(3)(E)(v) is unreasonable. States are required to submit section 110 infrastructure SIPs within 3 years of the promulgation of a new NAAQS (see CAA section 110(a)(1)), and taking commenter's interpretation at face value, states would be precluded from seeking redesignation of an area for one NAAQS if it had outstanding infrastructure obligations under an entirely different NAAQS. We think this reading of the CAA is patently unreasonable and not what Congress intended.

EPA's longstanding interpretation of ''applicable'' in CAA section 107(d)(3)(E)(v) focuses the Agency's review for purposes of redesignation to those requirements in section 110 and Part D that are linked to an area's nonattainment status for the specific NAAQS at issue and that will no longer need to be complied with upon redesignation. Requirements unlinked to an area's nonattainment status for a particular NAAQS will continue to apply after the area is redesignated to attainment, and an area failing to comply with those obligations would remain subject to all related CAA consequences, including the possibility of sanctions. EPA has applied this interpretation to conformity and oxygenated fuels requirements and section 184 ozone transport requirements. In *Wall* v. *EPA,* the 6th Circuit upheld this interpretation, affirming EPA's determination that a state's failure to submit a SIP addressing transportation conformity requirements was *not* a basis upon which to deny the state's request for redesignation for a particular area in the state, because that requirement was not ''applicable'' under CAA section 107(d)(3)(E)(v). 265 F.3d at 440.

With respect to the specific infrastructure elements cited by the commenter—the interstate transport requirements in CAA sections 110(a)(2)(D)(i)(I) and the requirements in CAA sections 110(a)(2)(D)(i)(II) and 110(a)(2)(J) to address visibility—these elements are not ''applicable'' requirements for purposes of CAA section 107(d)(3)(E)(v). As noted above, these requirements are not linked to the area's designation as nonattainment for SO_2 and apply regardless of whether EPA redesignates the Indianapolis area. In any case, EPA approved the visibility element of CAA section 110(a)(2)(D)(i)(II), known as ''Prong 4,'' [2] for Indiana's SO_2 infrastructure SIP on September 6, 2019 (84 FR 46889), so the comment that this requirement is missing from the infrastructure SIP is no longer accurate. In addition, on February 27, 2015 (80 FR 10644), EPA proposed to find that the requirements in CAA section 110(a)(2)(J) to address visibility were not germane to the State's infrastructure SIP for the 2010 SO_2 NAAQS, and thus EPA took no action on that element in its final action on August 14, 2015 (80 FR 48733). To the extent that commenter is alleging that there are additional unapproved infrastructure SIP requirements under CAA section 110 besides the CAA section 110(a)(2)(D)(i)(I) transport prongs which EPA has not taken action upon, that Indiana would need to comply with before it may be redesignated, Indiana has met all of its other infrastructure requirements under CAA section 110. *See* 80 FR 48733 (August 14, 2015) (approving all other infrastructure SIP elements).

For all these reasons, EPA concludes that Indiana has met all CAA section 110 SIP elements applicable for purposes of redesignation.

Comment: EPA lists several Federal rulemakings as establishing allowable limits for six modeled sources. These include the Cross-State Air Pollution Rule (CSAPR), Mercury and Air Toxics Standards (MATS), and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Industrial Commercial and Institutional Boilers and Process Heaters. The commenter states that while EPA's proposal explained that these limits have been

[2] Commenter cited ''prong 3 for visibility.'' In CAA section 110(a)(2)(D)(i)(II), Prong 3 is ''interstate transport-prevention of significant deterioration,'' and Prong 4 is ''interstate transport-protect visibility.''

adopted at 326 IAC 7–4–2.1, the commenter believes that the Federal rulemakings cannot have themselves established appropriate enforceable limits for addressing hourly SO_2, because they were not written to do so. The commenter states that if EPA expects any co-benefits from these Federal programs, then it must first quantify those reductions, and then require Indiana to include these measures in an approved SIP revision.

EPA Response: The April 30, 2019 proposed redesignation included a statement which inadvertently oversimplified the role of CSAPR, MATS, and the NESHAP in Indiana's achieving SO_2 reductions in Indianapolis. In its July 17, 2017 submittal, Indiana stated that some emission limits for the Indianapolis facilities were established in response to those Federal rulemakings, which several facilities had already worked to comply with. However, Indiana did not rely on the existence of Federal rulemakings alone, but rather codified the facilities' SO_2 emission limits in 326 IAC 7–4–2.1. The limits in 326 IAC 7–4–2.1 were fully approved into Indiana's SIP on March 22, 2019 (84 FR 10692) and are permanent, enforceable, hourly emission limits. Indiana's modeled demonstration of attainment, detailed in EPA's NPRM on Indiana's nonattainment SO_2 SIP for Indianapolis, August 15, 2018 (83 FR 40487), showed that the emission limits in 326 IAC 7–4–2.1 are adequate to attain and maintain the 2010 SO_2 NAAQS in the Indianapolis nonattainment area.

Comment: The commenter stated that, based on information in an EPA website, 326 IAC 7–4–2.1 was not SIP-approved at the time of EPA's proposed redesignation. The commenter asserted that EPA could not rely on emission reductions from the rule to determine attainment of the SO_2 NAAQS.

EPA Response: Indiana revised its SO_2 rule for Marion County, codified at 326 IAC 7–4–2.1, and submitted it as a SIP revision on October 2, 2015. EPA approved these rules on March 22, 2019 (84 FR 10692). The rule was fully approved into the SIP at the time of EPA's April 30, 2019 proposed redesignation of the Indianapolis SO_2 nonattainment area. EPA's website has been updated accordingly.

Comment: EPA must clarify that Indiana is required to submit a second ten-year maintenance plan by the eighth year of the first ten-year maintenance period. Since Indiana's maintenance plan is effective to December 31, 2030, Indiana should be required to submit a second ten-year maintenance plan by December 31, 2028, and not eight years after EPA's approval of this maintenance plan (which, if EPA publishes the final rule in 2019 would be 2027).

EPA Response: CAA section 175A(b) requires the State to submit an additional revision of the maintenance plan eight years after redesignation of the area. Indiana has committed in its July 10, 2017 submittal to fulfill this CAA requirement.

III. What action is EPA taking?

EPA is redesignating the Indianapolis SO_2 nonattainment area to attainment of the 2010 SO_2 NAAQS. This area consists of Center, Perry, and Wayne Townships in Marion County, Indiana. EPA is also approving Indiana's SO_2 maintenance plan for the Indianapolis area.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule relieves the State of planning requirements for this SO_2 nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of the geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application 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 these reasons, 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 it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of 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 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 the NAAQS in tribal lands.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 20, 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

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 24, 2020.

Kurt Thiede,

Regional Administrator.

40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770, the table in paragraph (e) is amended by adding an entry for ''Indianapolis 2010 Sulfur Dioxide (SO_2) maintenance plan'' following the entry ''Indianapolis 2010 Sulfur Dioxide (SO_2) Attainment Plan'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* * * * * * *			
Indianapolis 2010 Sulfur Dioxide (SO_2) maintenance plan.	7/10/2017	5/21/2020, [insert **Federal Register** citation].	
* * * * * * *			

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.315 is amended by revising the entry ''Indianapolis, IN'' in the table entitled ''Indiana—2010 Sulfur Dioxide NAAQS [Primary]'' to read as follows:

§ 81.315 Indiana.

* * * * *

INDIANA—2010 SULFUR DIOXIDE NAAQS

[Primary]

Designated area[1] [3]	Designation	
	Date[2]	Type
* * * * * * *		
Indianapolis, IN Marion County (part). Wayne Township, Center Township, Perry Township.	May 21, 2020	Attainment.
* * * * * * *		

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is April 9, 2018, unless otherwise noted.

[3] Porter County will be designated by December 31, 2020.

* * * * *

[FR Doc. 2020–09246 Filed 5–20–20; 8:45 am]

BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1250

[Docket No. EP 724 (Sub-No. 5)]

Petition for Rulemaking; Railroad Performance Data Reporting

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (STB or Board) is adopting a final rule amending its railroad performance data reporting regulations to include chemical and plastics traffic as a distinct reporting category for the ''cars-held'' metric.

DATES: This rule is effective on July 20, 2020.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245–0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board's railroad performance data reporting regulations at 49 CFR part 1250, which became effective on March 21, 2017, require all Class I carriers and the Chicago Transportation Coordination Office (CTCO), through its Class I members, to report certain service performance metrics on a weekly, semiannual, and occasional basis.

On December 6, 2018, the American Chemistry Council (ACC) filed a petition for rulemaking [1] to amend those data reporting regulations to: (1) Include chemical and plastics (Standard Transportation Commodity Code (STCC) 28, except fertilizer) [2] traffic as a distinct reporting category for the cars-held metric at 49 CFR 1250.2(a)(6); (2) amend 49 CFR 1250.3(a) to clarify that yard dwell must be reported for each yard subject to average daily car volume reporting; [3] and (3) extend the same types of terminal reporting requirements that are applicable to the Chicago gateway (as clarified by comments filed by ACC on May 6, 2019) to the New Orleans, East St. Louis, and Memphis gateways (together, the Mississippi Gateways). (Pet. 1, 5; ACC Comments 1, 12–13, May 6, 2019.)

On January 28, 2019, the Association of American Railroads (AAR) filed a reply in opposition to ACC's petition. By decision served on April 5, 2019, the Board opened a rulemaking proceeding and directed ACC and AAR to provide additional information regarding ACC's proposed amendments to the regulations. Pursuant to that decision, ACC and AAR each filed comments on May 6, 2019, and AAR filed reply comments on May 20, 2019.

After considering the petition for rulemaking and the comments received, the Board granted ACC's petition in part and proposed amending its regulations to include chemical and plastics (STCC 28, except fertilizer) traffic as a distinct reporting category for the cars-held metric at § 1250.2(a)(6). NPRM, EP 724 (Sub-No. 5) (STB served Sept. 30, 2019). The Board denied ACC's petition with regard to its other requested amendments.

In response to the *NPRM,* the Board received comments from ACC, AAR, the American Fuel & Petrochemical Manufacturers (AFPM), BNSF Railway Company (BNSF), and Canadian National Railway Company (CN). After consideration of the comments received, the Board will adopt as the final rule the *NPRM* proposal, with one modification. Specifically, the final rule modifies the proposed rule to clarify that the term ''chemical or allied products'' encompasses all STCC 28 commodities not otherwise reported under ethanol or fertilizer.

Background

In 2014, the Board initiated a rulemaking proceeding to establish new regulations requiring all Class I railroads and the CTCO, through its Class I members, to report certain service performance metrics on a weekly basis. *See U.S. Rail Serv. Issues—Performance Data Reporting* (*2014 NPRM*), EP 724 (Sub-No. 4) (STB served Dec. 30, 2014).[4] The primary purpose of that rulemaking proceeding was to develop a set of performance data that would allow the agency to monitor current service conditions in the industry and improve the Board's ability to identify and help resolve future regional or national service disruptions more quickly, should they occur. *Id.* at 3. The Board adopted its final rule on November 30, 2016, *U.S. Rail Service Issues—Performance Data Reporting,* EP 724 (Sub-No. 4) (STB served Nov. 30, 2016), and the rule became effective on March 21, 2017.[5]

Proposed Rule

As noted above, ACC petitioned the Board to institute a rulemaking proceeding to, among other things, revise § 1250.2(a)(6) to include chemical and plastics (STCC 28, except fertilizer) traffic as a distinct reporting category for the cars-held metric. ACC stated that STCC 28 traffic accounts for the highest number of manifest carloads, compared to all other two-digit STCC groups, and plays a key role in the national economy. (Pet 1.) According to ACC, STCC 28 traffic is especially vulnerable to rail service problems because it cannot readily shift to alternative rail carriers or to other modes. (*Id.* at 7.)

ACC asserted that separately reporting cars-held data for STCC 28 traffic would enable shippers to identify regional issues affecting that traffic. (ACC Comments 6, May 6, 2019.) ACC argued that the cars-held metric is an important indicator of rail system fluidity and that, for STCC 28 traffic, a fluid rail system is especially important in the Gulf Coast, where a substantial portion of this traffic is concentrated. (*Id.*) ACC also asserted that the current data reporting masks the severity of service events having a disproportionate impact on STCC 28 traffic. (*Id.* at 6–7.) ACC argued that additional reporting would enhance shippers' ability to internally manage service issues and might lead to substantial cost savings. (*Id.* at 9.)

AAR opposed adopting additional commodity-specific reporting, arguing that a narrow focus on subsets of rail traffic could remove important context from the full picture of a globalized supply chain, that commodity-specific reporting is particularly susceptible to such distortion, and that granular reports are therefore of limited benefit. (AAR Reply 2–4, Jan. 28, 2019.) According to AAR, additional reporting of STCC 28 traffic as a line item in the ''cars-held for more than 48 hours'' report would require each Class I carrier to alter the coding necessary to pull the data prescribed by the Board. (AAR Comments 9–10, May 6, 2019.) AAR objected to ''[c]ontinuous changes to the

[1] On December 12, 2018, ACC filed an errata to its petition.

[2] STCC 28 is designated for ''chemicals or allied products'' and referred to generally by ACC as ''chemical and plastics.'' ACC excluded the fertilizer reporting category of STCC 28 from its request because fertilizer is already included in the Board's data reporting regulations under section 1250.2(a)(6). (*See* Pet. 6.)

[3] ACC initially sought to extend the weekly average terminal dwell time reporting requirement at 49 CFR 1250.2(a)(2) to include all Class I, terminal, and switching carriers at the Chicago gateway. However, in its comments filed on May 6, 2019, ACC withdrew this part of its initial request and instead sought the amendment described here.

[4] For background on the service problems that led to the Board initiating the 2014 proceeding, see *2014 NPRM,* EP 724 (Sub-No. 4), slip op. at 2–3.

[5] By decision served on March 13, 2017, the Board issued a technical correction to the final rule to add one fertilizer STCC to the 14 fertilizer STCCs initially included. *U.S. Rail Serv. Issues—Performance Data Reporting,* EP 724 (Sub-No. 4) (STB served Mar. 13, 2017).

Board's reporting rules,'' arguing that such changes would ''impose ongoing costs to railroads that would need to make programming changes to their systems to enable compliance.'' (AAR Reply 3, Jan. 28, 2019; AAR Comments 9, May 6, 2019.) AAR also noted that ACC had the opportunity to make this request in the past and failed to do so. (AAR Comments 9, May 6, 2019.)

After considering ACC's petition and the responsive comments filed, the Board concluded that including STCC 28 traffic as a distinct reporting category for the cars-held metric at section 1250.2(a)(6) would be reasonable, warranted, and consistent with the rail transportation policy (RTP) of 49 U.S.C. 10101, and proposed a rule requiring such reporting. *NPRM,* EP 724 (Sub-No. 5), slip op. at 6.

In response to the *NPRM,* both BNSF and CN comment they are not opposed to reporting chemical and plastics traffic as a distinct reporting category but note that there are two commodity groups within STCC 28 that are already reported in separate cars-held categories in § 1250.2(a)(6)—fertilizer and ethanol. (CN Comments 1; BNSF Reply Comments 2.) CN states that the Board should make clear that the ''chemicals or allied products'' category will not include these other commodities in STCC 28 that are already reported in existing categories of the cars-held metric to avoid a double count. (CN Comments 1.) CN explains that it plans to use the list of seven-digit STCCs from Railinc Corporation (Railinc) for STCC 28 traffic (except fertilizer and ethanol).[6] (*Id.* at 2–3.) Similarly, BNSF states that it intends to comply by reporting on chemicals and plastics as the STCC 28 categories that are not otherwise captured by the historic and ongoing reporting for fertilizer and ethanol. (BNSF Reply Comments 2.) In light of the potential overlap between ''chemical or allied products'' and ethanol and fertilizer, the Board will modify its proposed rule to clarify that the term ''chemical or allied products'' encompasses all STCC 28 commodities not otherwise reported under ethanol or fertilizer.

As explained in the *NPRM,* pursuant to the RTP, in regulating the railroad industry, it is the policy of the United States Government to, among other things, minimize the need for regulatory control, 49 U.S.C. 10101(2), promote a safe and efficient rail transportation system, 49 U.S.C. 10101(3), ensure the development of a sound rail transportation system to meet the needs of the public, 49 U.S.C. 10101(4), and encourage efficient management of railroads, 49 U.S.C. 10101(9). *NPRM,* EP 724 (Sub-No. 5), slip op. at 6. The final rule will promote the RTP by allowing the agency, as well as shippers and other stakeholders, to more quickly identify and respond to service issues related to these important commodities. Reporting of chemicals and plastics as a stand-alone category of cars holding for 48 hours or longer would, in addition to allowing the Board and shippers to monitor the fluidity of these commodities vital to essential goods and services, have the potential to help shippers address such issues privately with railroads, make operational adjustments, and improve their business planning, including through the management of their rail car fleets. These private solutions, without further involvement by the Board, could reduce the need for litigation and could lower overall costs of the provision of these commodities.

Other Issues

As noted above, in issuing the *NPRM,* the Board concluded that ACC had not provided adequate justification for its proposal to extend to the Mississippi Gateways the terminal reporting requirements currently applicable to Chicago, and therefore denied ACC's request to include that proposal in the *NPRM. NPRM,* EP 724 (Sub-No. 5), slip op. at 8.

In commenting on the *NPRM,* ACC asks that the Board remain open to requiring reporting of Mississippi Gateway data if warranted by events, arguing that the data would enable shippers whose cross-country traffic moves through the Mississippi Gateways to detect gateway congestion, identify uncongested gateways, and pursue routing through them. (ACC Comments 6–7, Dec. 6, 2019.) AFPM urges the Board to reconsider this decision and ''keep an open mind'' about including the Mississippi Gateways in the reporting requirements. (AFPM Comments 5.) AFPM states that the Mississippi Gateways are ''vital chokepoints'' in the national freight rail system and that increased petrochemical production could exacerbate the existing rail network capacity problems that AFPM's members in the Gulf Coast are already experiencing. (*Id.* at 5–6.)

In response, AAR comments that ACC failed to demonstrate that its requested reporting would have public benefits tied to the Board's regulatory authority that would justify the expense and burden that reporting would place on carriers. (AAR Reply Comments 2, Jan. 6, 2020.) AAR further comments that AFPM, in urging the Board to reconsider its decision, has failed to address the Board's standards for reconsideration.[7] (*Id.*)

The Board will not expand the scope of this rule to include additional terminal reporting requirements for the reasons it explained in the *NPRM.* While AFPM disagrees with the Board's decision not to propose including Mississippi Gateways in the reporting requirements, it has not provided additional justification that undermines the Board's reasoning in the *NPRM.*

To the extent that ACC urges the Board to remain open to reconsidering this issue should future events warrant additional gateway reporting, the Board confirms that it would, as in all actions, consider substantially changed circumstances as a potential ground for reconsideration pursuant to 49 U.S.C. 1322(c).

Final Rule

For the reasons discussed above, the Board is adopting a final rule, as set forth below, to amend its regulations to include chemicals or allied products (all STCC 28 commodities not otherwise reported under ethanol or fertilizer) traffic as a distinct reporting category for the ''cars-held'' metric at section 1250.2(a)(6).[8]

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment.

[6] CN explains that its current algorithm for reporting ethanol and fertilizer commodities for the cars-held metric is coded at the seven-digit STCC level and requests that the Board confirm that a rail carrier may use the list of seven-digit STCCs from Railinc in effect when the Board's proposed rule becomes effective to comply with the Board's proposal that a rail carrier separately report the category of ''chemicals or allied products'' in the cars-held metric under section 1250.2(a)(6). (CN Comments 2–3.) The Board has thus far not prescribed the methodology by which rail carriers derive their data and will not do so here. *See* 49 CFR 1250.1(c).

[7] BNSF and CN both state support for AAR's reply comments on the issue of the Mississippi Gateways. (BNSF Reply Comments 2; CN Reply Comments 1.)

[8] As noted above, the Board is modifying its proposed rule to clarify that the term ''chemical or allied products'' encompasses all STCC 28 commodities not otherwise reported under ethanol or fertilizer.

Sections 601–604. In its final rule, the agency must either include a final regulatory flexibility analysis, section 604(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' section 605(b). The ''impact'' must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

In the *NPRM,* the Board certified that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.[9] The Board explained that the proposed change to its regulations was intended to improve the quality of the service data reported by Class I carriers and would not mandate or circumscribe the conduct of small entities. The final rule adopted here is limited to Class I carriers, so the same basis for the Board's certification of the proposed rule in the *NPRM* applies to the final rule. Therefore, the Board certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Paperwork Reduction Act

In this proceeding, the Board is modifying an existing collection of information that is currently approved by the Office of Management at Budget (OMB) through June 30, 2020, under the collection of the United States Rail Service Issues-Performance Data Reporting (OMB Control No. 2140–0033). In the *NPRM,* the Board sought comments pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521, and OMB regulations, 5 CFR 1320.8(d)(3), regarding: (1) Whether the collection of information, as modified in the proposed rule and further described in the *NPRM,*[10] is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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, when appropriate. No comments were received pertaining to the collection of this information under the PRA.

This modification to an existing collection will be submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11.

Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801–808, the Office of Information and Regulatory Affairs has designated this rule as a non-major rule, as defined by 5 U.S.C.804(2).

It is ordered:

1. The Board adopts the final rule as set forth below. Notice of the final rule will be published in the **Federal Register**.

2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

3. This decision is effective on July 20, 2020.

List of Subjects in 49 CFR Part 1250

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

Decided: May 14, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Kenyatta Clay,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board amends part 1250 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1250—RAILROAD PERFORMANCE DATA REPORTING

■ 1. The authority citation for part 1250 continues to read as follows:

Authority: 49 U.S.C. 1321 and 11145.

■ 2. Amend § 1250.2 by revising the first sentence of paragraph (a)(6) to read as follows:

§ 1250.2 Railroad performance data elements.

(a) * * *

(6) The weekly average of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in 48 hours or more, sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, fertilizer (the following Standard Transportation Commodity Codes (STCCs): 2812534, 2818142, 2818146, 2818170, 2818426, 2819173, 2819454, 2819815, 2871235, 2871236, 2871238, 2871244, 2871313, 2871315, and 2871451), chemicals or allied products (all STCC 28 not otherwise reported under ethanol or fertilizer), and all other). * * *

* * * * *

[FR Doc. 2020–10952 Filed 5–20–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 200227–0066; RTID 0648–XY105]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole for Vessels Participating in the BSAI Trawl Limited Access Sector Fishery in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for yellowfin sole in the Bering Sea and Aleutian Islands management area (BSAI) for vessels participating in the BSAI trawl limited access sector fishery. This action is necessary to prevent exceeding the 2020 allocation of yellowfin sole total allowable catch for vessels participating in the BSAI trawl limited access sector fishery in the BSAI.

DATES: This temporary rule is effective on May 18, 2020. This rule is applicable 1200 hrs, Alaska local time (A.l.t.), May 15, 2020, through 2400 hrs, A.l.t., December 31, 2020.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

[9] For the purpose of RFA analysis for rail carriers subject to the Board's jurisdiction, the Board defines a ''small business'' as only including those rail carriers classified as Class III rail carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regulatory Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting). Class III carriers have annual operating revenues of $20 million or less in 1991 dollars, or $39,194,876 or less when adjusted for inflation using 2018 data. Class II carriers have annual operating revenues of less than $250 million in 1991 dollars, or $489,935,956 when adjusted for inflation using 2018 data. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds in decisions and on its website. 49 CFR 1201.1–1; *Indexing the Annual Operating Revenues of R.Rs.,* EP 748 (STB served June 14, 2019).

[10] As discussed above, the Board made a minor change to the final rule, clarifying the term ''chemical or allied products.'' The change, however, does not impact the Board's analysis of the collection.

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

The 2020 allocation of yellowfin sole total allowable catch for vessels participating in the BSAI trawl limited access sector fishery in the BSAI is 17,172 metric tons (mt) as established by the final 2020 and 2021 harvest specifications for groundfish in the BSAI (85 FR 13553, March 9, 2020). In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2020 yellowfin sole total allowable catch allocated as a directed fishing allowance for vessels participating in the BSAI trawl limited access sector fishery in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for yellowfin sole for vessels participating in the BSAI trawl limited access sector fishery in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for yellowfin sole by vessels fishing in the BSAI trawl limited access sector fishery in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 14, 2020.

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

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: May 18, 2020.

Hélène M. N. Scalliest,

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

[FR Doc. 2020–11015 Filed 5–18–20; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 85, No. 99
Thursday, May 21, 2020

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–STD–0019]

RIN 1904–AD91

Energy Conservation Program: Energy Conservation Standards for Consumer Water Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (''DOE'') is initiating an effort to determine whether to amend the current energy conservation standards for consumer water heaters. This request for information (''RFI'') solicits information from the public to help DOE determine whether amended standards for consumer water heaters would result in significant energy savings and whether such standards would be technologically feasible and economically justified. DOE welcomes written comments from the public on any subject within the scope of this document (including topics not raised in this RFI).

DATES: Written comments and information are requested and will be accepted on or before July 6, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–STD–0019, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: ConsumerWaterHeaters2017STD0019@ee.doe.gov.* Include the docket number EERE–2017–BT–STD–0019 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at: *https://www.regulations.gov/docket?D=EERE-2017-BT-STD-0019.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

For further information on how to submit a comment, or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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f. Electric Instantaneous Water Heaters
g. Oil-Fired Instantaneous Water Heaters
h. Grid-Enabled Water Heaters
4. Manufacturer Production Costs and Manufacturer Selling Prices
F. Markups Analysis
1. Distribution Channels
a. Replacement and New Owner
b. New Construction
2. Markups
G. Energy Use Analysis
1. Building Sample
2. Hot Water Use
3. Determination of Consumer Water Heating Energy Use
H. Life-Cycle Cost and Payback Period Analysis
1. Total Installed Cost
2. Operating Costs
I. Shipments Analysis
J. National Impact Analysis
K. Manufacturer Impact Analysis
L. Other Energy Conservation Standards Topics
1. Market Failures
2. Market-Based Approaches to Energy Conservation Standards
III. Submission of Comments

I. Introduction

Consumer water heaters are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42

U.S.C. 6292(a)(4)) DOE's energy conservation standards for consumer water heaters are prescribed in title 10 of the Code of Federal Regulations (''CFR'') part 430, section 32(d). The following sections discuss DOE's authority to establish and amend energy conservation standards for consumer water heaters, as well as relevant background information regarding DOE's evaluation of energy conservation standards for this product.

A. Authority and Background

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include consumer water heaters, the subject of this document. (42 U.S.C. 6292(a)(4)) EPCA prescribed energy conservation standards for these products and directed DOE to conduct two cycles of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(e)(1) and (4))

Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption in limited instances for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d).

DOE completed the first of these rulemaking cycles on January 17, 2001 by publishing amended performance standards for consumer water heaters. 66 FR 4474 (establishing amended standards to apply starting on January 20, 2004) (''January 2001 Final Rule''). Additionally, DOE completed a second rulemaking cycle to amend the standards for consumer water heaters by publishing a final rule on April 16, 2010. 75 FR 20112 (establishing amended standards to apply starting on April 16, 2015) (''April 2010 Final Rule''). As directed by EPCA (42 U.S.C. 6295(e)(4)(E)), on July 11, 2014, DOE published a final rule amending the test procedure for consumer water heaters to change the efficiency metric from energy factor (''EF'') to uniform energy factor (''UEF''). 79 FR 40542. The existing EF-based energy conservation standards were then translated from EF to UEF in a separate DOE conversion factor final rule that established a method for converting EF to UEF for water heater basic models that were previously in existence. 81 FR 96204 (Dec. 29, 2016) (''December 2016 Conversion Factor Final Rule''). The current energy conservation standards are located at 10 CFR 430.32(d). The currently applicable DOE test procedures for consumer water heaters appear at 10 CFR part 430, subpart B, appendix E (''Appendix E'').

EPCA also requires that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE evaluate the energy conservation standards for each type of covered product, including those at issue here, and publish either a notice of determination that the standards do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) EPCA further provides that, not later than 3 years after the issuance of a final determination not to amend standards, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which the determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2)) In making a determination, DOE must evaluate whether more-stringent standards would: (1) Yield a significant savings in energy use; (2) be technologically feasible; and (3) be cost-effective under 42 U.S.C. 6295(o)(2)(B)(i)(II). (42 U.S.C. 6295(m)(1)(A))

DOE is publishing this RFI to collect data and information to inform its decision consistent with its obligations under EPCA.

B. Rulemaking Process

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products. EPCA requires that any new or amended energy conservation standard be designed to achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the affected products;

(2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial cost, or maintenance expenses;

(3) The total projected amount of energy and water (if applicable) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (Oct. 23, 2018).

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings	• Shipments Analysis. • National Impact Analysis. • Energy and Water Use Determination.
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	
1. Economic impact on manufacturers and consumers	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis.
2. Lifetime operating cost savings compared to increased cost for the product	• Shipments Analysis. • Mark-ups for Product Price Determination. • Energy and Water Use Determination. • Life-Cycle Cost and Payback Period Analysis.
3. Total projected energy savings	• Shipments Analysis. • National Impact Analysis.
4. Impact on utility or performance	• Screening Analysis. • Engineering Analysis.
5. Impact of any lessening of competition	• Manufacturer Impact Analysis.
6. Need for national energy and water conservation	• Shipments Analysis. • National Impact Analysis.
7. Other factors the Secretary considers relevant	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits. • Regulatory Impact Analysis.

As detailed throughout this RFI, DOE is publishing this document seeking input and data from interested parties to aid in the development of the technical analyses on which DOE will ultimately rely to determine whether (and if so, how) to amend the standards for consumer water heaters.

II. Request for Information and Comments

In the following sections, DOE has identified a variety of issues on which it seeks input to aid in the development of the technical and economic analyses regarding whether amended standards for consumer water heaters may be warranted. Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. See 82 FR 9339 (Feb. 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its energy conservation standard rulemakings, recordkeeping and reporting requirements, and compliance and certification requirements applicable to consumer water heaters while remaining consistent with the requirements of EPCA.

In addition, DOE seeks comment on whether there have been sufficient technological or market changes since the most recent standards update that may justify a new rulemaking to consider more-stringent standards. Specifically, DOE seeks data and information that could enable the agency to determine whether DOE should propose a ''no new standard'' determination because a more-stringent standard: (1) Would not result in a significant savings of energy; (2) is not technologically feasible; (3) is not economically justified, or (4) any combination of the foregoing.

Finally, DOE notes that it recently published an RFI on the emerging smart technology appliance and equipment market. 83 FR 46886 (Sept. 17, 2018). In that RFI, DOE sought information to better understand market trends and issues in the emerging market for appliances and commercial equipment that incorporate smart technology. DOE's intent in issuing the RFI was to ensure that DOE did not inadvertently impede such innovation in fulfilling its statutory obligations in setting efficiency standards for covered products and equipment. DOE seeks comments, data, and information on the issues presented in that RFI as they may be applicable to consumer water heaters.

A. Products Covered by This Analysis

This RFI covers those products that meet the definitions for consumer water heaters, as codified at 10 CFR 430.2. The definitions for consumer water heaters were most recently amended in a standards final rule that defined the term ''grid-enabled water heater.'' 80 FR 48004 (August 11, 2015).

Generally, DOE defines a ''water heater,'' consistent with EPCA's definition, as a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(a) Storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(b) Instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instantaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(c) Heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature

level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

10 CFR 430.2; (42 U.S.C. 6291(27))

In addition, at 10 CFR 430.2, DOE further defines several specific categories of consumer water heaters, as follows:

(1) ''Electric instantaneous water heater'' means a water heater that uses electricity as the energy source, has a nameplate input rating of 12 kW or less, and contains no more than one gallon of water per 4,000 Btu per hour of input.

(2) ''Electric storage water heater'' means a water heater that uses electricity as the energy source, has a nameplate input rating of 12 kW or less, and contains more than one gallon of water per 4,000 Btu per hour of input.

(3) ''Gas-fired instantaneous water heater'' means a water heater that uses gas as the main energy source, has a nameplate input rating less than 200,000 Btu/h, and contains no more than one gallon of water per 4,000 Btu per hour of input.

(4) ''Gas-fired storage water heater'' means a water heater that uses gas as the main energy source, has a nameplate input rating of 75,000 Btu/h or less, and contains more than one gallon of water per 4,000 Btu per hour of input.

(5) ''Grid-enabled water heater'' means an electric resistance water heater that—

(a) Has a rated storage tank volume of more than 75 gallons;

(b) Is manufactured on or after April 16, 2015;

(c) Is equipped at the point of manufacture with an activation lock and;

(d) Bears a permanent label applied by the manufacturer that—

(i) Is made of material not adversely affected by water;

(ii) Is attached by means of non-water-soluble adhesive; and

(iii) Advises purchasers and end-users of the intended and appropriate use of the product with the following notice printed in 16.5 point Arial Narrow Bold font: ''IMPORTANT INFORMATION: This water heater is intended only for use as part of an electric thermal storage or demand response program. It will not provide adequate hot water unless enrolled in such a program and activated by your utility company or another program operator. Confirm the availability of a program in your local area before purchasing or installing this product.''

(6) ''Oil-fired instantaneous water heater'' means a water heater that uses oil as the main energy source, has a nameplate input rating of 210,000 Btu/h or less, and contains no more than one gallon of water per 4,000 Btu per hour of input.

(7) ''Oil-fired storage water heater'' means a water heater that uses oil as the main energy source, has a nameplate input rating of 105,000 Btu/h or less, and contains more than one gallon of water per 4,000 Btu per hour of input.

As stated in section I of this RFI, EPCA prescribed energy conservation standards for all consumer water heaters (*i.e.,* those that meet the definition of ''water heater'' above). For the purpose of this RFI and the evaluation of potential amended energy conservation standards, DOE is considering all consumer water heaters, as defined by EPCA.

DOE previously established a separate product class and definition for ''tabletop water heaters,'' which required such products to be in a rectangular box enclosure designed to slide into a kitchen countertop space with typical dimensions of 36 inches high, 25 inches deep, and 24 inches wide. 66 FR 4474, 4497 (Jan. 17, 2001) The definition of ''tabletop water heater'' was established in appendix E, but a subsequent relocation of definitions removed that definition from appendix E without re-establishing it in 10 CFR 430.2.

Issue A.1 DOE requests feedback on whether the previous definition for ''tabletop water heater'' is still appropriate, whether such products should continue to be considered separately from other classes of consumer water heaters, and whether such definition should be added to the list of definitions in 10 CFR 430.2.

B. Test Procedure

DOE's existing test procedures for consumer water heaters are set forth at 10 CFR part 430, subpart B, Appendix E—Uniform Test Method for Measuring the Energy Consumption of Water Heaters. DOE's consumer water heater test procedure provides methods for determining the first-hour rating (''FHR''), maximum gallons per minute (''max GPM''), and UEF for consumer gas-fired, oil-fired, and electric storage and instantaneous water heaters. As stated in section I.A of this document, the test procedure for consumer water heaters was updated in July 2014 to transition from the EF metric to the UEF metric, and to expand the scope of the test method to cover all covered consumer water heaters, as well as certain commercial water heaters (*i.e.,* those meeting the definition of a ''residential-duty commercial water heater''). 79 FR 40542 (July 11, 2014). The major difference between the EF and UEF metrics is that the EF test consists of six hot water draws of equal volume and flow rate followed by a standby period for all water heaters, while the UEF test procedure consists of varying draw patterns depending on the delivery capacity of the consumer water heater, which include between 9 and 14 draws of varying volumes and flow rates. Due to the difference in draw pattern as well as other differences established in the UEF test method (*e.g.,* changes to the set point temperature and method for setting the thermostat) the EF and UEF values are not directly comparable. For this evaluation of potential amended energy conservation standards, DOE will use UEF as the basis for its analysis.

C. Market and Technology Assessment

The market and technology assessment that DOE routinely conducts when analyzing the impacts of a potential new or amended energy conservation standard provides information about the consumer water heater industry that will be used in DOE's analysis throughout the rulemaking process. DOE uses qualitative and quantitative information to characterize the structure of the industry and market. DOE identifies manufacturers, estimates market shares and trends, addresses regulatory and non-regulatory initiatives intended to improve energy efficiency or reduce energy consumption, and explores the potential for efficiency improvements in the design and manufacturing of consumer water heaters. DOE also reviews product literature, industry publications, and company websites. Additionally, DOE considers conducting interviews with manufacturers to improve its assessment of the market and available technologies for consumer water heaters.

1. Product Classes

When evaluating and establishing energy conservation standards, DOE may divide covered products into product classes by the type of energy used, or by capacity or other performance-related features that justify a different standard. (42 U.S.C. 6295(q)) In making a determination whether capacity or another performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE deems appropriate. (*Id.*)

For consumer water heaters, the current energy conservation standards specified at 10 CFR 430.32(d) vary based

on fuel type (gas-fired, oil-fired, or electric), product category (storage, instantaneous, tabletop, grid-enabled), stored volume, and capacity (draw pattern).

The December 2016 Conversion Factor Final Rule converted the EF-based energy conservation standards established in the January 2001 and April 2010 Final Rules to ratings based on the UEF metric. 81 FR 96204 (Dec. 29, 2016). Table II.1 describes the product classes and which standards apply to each range of rated storage volume and input rate.

TABLE II.1—DESCRIPTION OF APPLICABLE ENERGY CONSERVATION STANDARDS

Product class	Rated storage volume	Draw pattern *	Energy conservation standard **
Gas-fired Storage Water Heater	<20 gal		$EF = 0.6200 - 0.0019 \times V_r$.
	≥20 gal and ≤55 gal	Very Small	$UEF = 0.3456 - 0.0020 \times V_r$.
		Low	$UEF = 0.5982 - 0.0019 \times V_r$.
		Medium	$UEF = 0.6483 - 0.0017 \times V_r$.
		High	$UEF = 0.6920 - 0.0013 \times V_r$.
	>55 gal and ≤100 gal	Very Small	$UEF = 0.6470 - 0.0006 \times V_r$.
		Low	$UEF = 0.7689 - 0.0005 \times V_r$.
		Medium	$UEF = 0.7897 - 0.0004 \times V_r$.
		High	$UEF = 0.8072 - 0.0003 \times V_r$.
	>100 gal		$EF = 0.6200 - 0.0019 \times V_r$.
Oil-fired Storage Water Heater	≤50 gal	Very Small	$UEF = 0.2509 - 0.0012 \times V_r$.
		Low	$UEF = 0.5330 - 0.0016 \times V_r$.
		Medium	$UEF = 0.6078 - 0.0016 \times V_r$.
		High	$UEF = 0.6815 - 0.0014 \times V_r$.
	>50 gal		$EF = 0.5900 - 0.0019 \times V_r$.
Electric Storage Water Heater	<20 gal		$EF = 0.9300 - 0.00132 \times V_r$.†
	≥20 gal and ≤55 gal	Very Small	$UEF = 0.8808 - 0.0008 \times V_r$.
		Low	$UEF = 0.9254 - 0.0003 \times V_r$.
		Medium	$UEF = 0.9307 - 0.0002 \times V_r$.
		High	$UEF = 0.9349 - 0.0001 \times V_r$.
	>55 gal and ≤120 gal	Very Small	$UEF = 1.9236 - 0.0011 \times V_r$.
		Low	$UEF = 2.0440 - 0.0011 \times V_r$.
		Medium	$UEF = 2.1171 - 0.0011 \times V_r$.
		High	$UEF = 2.2418 - 0.0011 \times V_r$.
	>120 gal		$EF = 0.9300 - 0.00132 \times V_r$.†
Tabletop Storage	<20 gal		$EF = 0.9300 - 0.00132 \times V_r$.†
	≥20 gal and ≤120 gal	Very Small	$UEF = 0.6323 - 0.0058 \times V_r$.
		Low	$UEF = 0.9188 - 0.0031 \times V_r$.
		Medium	$UEF = 0.9577 - 0.0023 \times V_r$.
		High	$UEF = 0.9884 - 0.0016 \times V_r$.
	>120 gal		$EF = 0.9300 - 0.00132 \times V_r$.†
Gas-fired Instantaneous Water Heater	<2 gal and >50,000 Btu/h	Very Small	UEF = 0.80.
		Low	UEF = 0.81.
		Medium	UEF = 0.81.
		High	UEF = 0.81.
	≥2 gal or ≤50,000 Btu/h		$EF = 0.6200 - 0.0019 \times V_r$.
Oil-fired Instantaneous Water Heater	All		$EF = 0.5900 - 0.0019 \times V_r$.
Electric Instantaneous Water Heater	<2 gal	Very Small	UEF = 0.91.
		Low	UEF = 0.91.
		Medium	UEF = 0.91.
		High	UEF = 0.92.
	≥2 gal		$EF = 0.9300 - 0.00132 \times V_r$.
Grid-Enabled Water Heater	>75 gal	Very Small	$UEF = 1.0136 - 0.0028 \times V_r$.
		Low	$UEF = 0.9984 - 0.0014 \times V_r$.
		Medium	$UEF = 0.9853 - 0.0010 \times V_r$.
		High	$UEF = 0.9720 - 0.0007 \times V_r$.

* Draw patterns vary based on hot water delivery capacity in the UEF test procedure, while the EF test procedure relies on a single draw pattern for all water heaters. As a result, UEF values and UEF energy conservation standards are different based on the draw pattern, while EF values and energy conservation standards are not.

** Energy conservation standards based on EF were established by EPCA. Energy conservation standards based on UEF were established in the April 2010 Final Rule (75 FR 20112 (April 16, 2010)) and translated to equivalent UEF standards in the December 2016 Conversion Factor Final Rule (81 FR 96204 (Dec. 29, 2016)).

† EPCA initially established an energy conservation standard at $0.95 - .00132 \times V_r$ for electric storage water heaters. In the test procedure and energy conservation standards final rule that adopted the EF metric, DOE changed the standard to $0.93 - .00132 \times V_r$ to account for the changes to the test method for electric storage water heaters. 55 FR 42162, 42177 (Oct. 17, 1990).

Relevant to the establishment of product classes, EPCA provides that the Secretary may not prescribe an amended or new standard for covered products if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. 42 U.S.C. 6295(o)(4) Where the Secretary finds such ''performance characteristics (including reliability), features, sizes, capacities, and volumes'' (collectively referred to hereafter as ''features'') to

exist, the statute provides for the potential of establishing separate product classes. (42 U.S.C. 6295(q)(1))

On November 1, 2018, DOE published for comment a petition for rulemaking submitted by Spire, Inc., the National Gas Supply Association, the National Propane Gas Association, the American Public Gas Association, and the American Gas Association (''Gas Industry Petition''), which in part, raised the question of whether for residential furnaces and commercial water heating equipment (and similarly situated covered products and equipment) non-condensing technology and associated venting constitutes a performance-related ''feature'' under 42 U.S.C. 6295(o)(4), as would support a separate product/equipment class under 42 U.S.C. 6295(q)(1). 83 FR 54883. The comment period on the notice of petition for rulemaking was originally set to end on January 30, 2019, but DOE received two requests from interested parties seeking an extension of the comment period in order to develop additional data relevant to the petition. DOE granted these requests in a notice published in the **Federal Register** on January 29, 2019, which extended the comment period until March 1, 2019.

On July 11, 2019, following consideration of the Gas Industry Petition, public comments, and other information received on the petition, DOE published a notice of proposed interpretative rule (''NOPIR''), proposing to revise its interpretation of EPCA's ''features'' provision in the context of condensing and non-condensing technology used in furnaces, commercial water heating equipment, and similarly situated appliances (where permitted by EPCA). 84 FR 33011, 33020. DOE stated that as compared to products that rely on non-condensing technology, products that use condensing technology may result in more complicated/costly installations, require physical changes to a home that impact aesthetics (*e.g.,* by adding new venting into the living space or decreasing closet or other storage space), and may result in some enhanced level of fuel switching. *Id.* DOE also acknowledged that although energy efficiency improvements may pay for themselves over time, there is a significant increase in first-cost associated with residential furnaces and commercial water heaters using condensing technology, and for consumers with difficult installation situations (*e.g.,* inner-city row houses) there would be the added cost of potentially extensive venting modifications. *Id.* DOE proposed in the July 2019 NOPIR to interpret the statute to provide that adoption of energy conservation standards that would limit the market to natural gas and/or propane furnaces, water heaters, or similarly situated products/equipment (where permitted by EPCA) that use condensing combustion technology would result in the unavailability of a performance related feature within the meaning of 42 U.S.C. 6295(o)(4). 84 FR 33011, 33021 (July 11, 2019). DOE is currently considering the comments received on the July 2019 NOPIR, after which the Department will determine whether and how to proceed with the interpretive rule in response to the Gas Industry Petition.

DOE is evaluating all the product classes for consumer water heaters presented in Table II.1 of this RFI. DOE may also consider additional product classes based on any performance-related features that justify the establishment of a different energy conservation standard, or it may consider consolidating product classes in appropriate cases. (42 U.S.C. 6295(q)) In light of the July 2019 NOPIR, DOE plans to evaluate the effects of treating non-condensing technology and associated venting as a performance-related ''feature'' under 42 U.S.C. 6295(o)(4), as would support a separate product class for consumer water heaters under 42 U.S.C. 6295(q)(1).

Issue C.1 DOE requests feedback on the current consumer water heater product classes and whether changes to these individual product classes and their descriptions should be made or whether certain classes should be separated or merged. Specifically, with regard to consumer water heaters that use condensing technology and the related venting, DOE requests information and data on potential impacts as compared to consumer water heaters that use non-condensing technology, such as, but not limited to, the complexity/cost of installation, changes to a home's aesthetics, and the potential for fuel switching. DOE also requests comment on other instances where it may be appropriate to separate any of the existing product classes and whether it might reduce any compliance burdens. DOE further requests feedback on whether combining certain classes could impact product utility by eliminating any performance-related features or impact the stringency of the current energy conservation standard for these products.

Issue C.2 DOE seeks information regarding any other new product classes it should consider for inclusion in its analysis. Specifically, DOE requests information on the performance-related features that provide unique consumer utility and data detailing the corresponding impacts on energy use that would justify separate product classes (*i.e.,* explanation for why the presence of these performance-related features would increase energy consumption).

2. Technology Assessment

In analyzing the feasibility of potential new or amended energy conservation standards, DOE uses information about existing and past technology options and prototype designs to help identify technologies that manufacturers could use to meet and/or exceed a given set of energy conservation standards under consideration. In consultation with interested parties, DOE intends to develop a list of technologies to consider in its analysis. That analysis will initially include a number of the technology options DOE previously considered during its most recent rulemaking for consumer water heaters (*i.e.,* the April 2010 Final Rule). 75 FR 20112, 20136–20145 (April 16, 2010). In addition, DOE conducted preliminary market research by examining manufacturer product literature and published technical literature (*e.g.,* reports, journal articles, or presentations) which identified specific technologies and design options, and DOE will consider these along with any others identified during the rulemaking process, should it determine that a rulemaking is necessary. The technologies DOE has identified to date, including several technology options from the previous rulemaking, are presented in Table II.2 of this RFI. DOE notes that while this list includes all technology options that DOE is aware of with the potential to reduce energy consumption, a number of the technology options would not affect the UEF (*i.e.,* the regulatory metric) as measured by the DOE test procedure even though they may reduce actual energy consumption when installed. DOE has included such technologies in this list for informational purposes only, as technologies that do not affect UEF would not necessarily be implemented to comply with potential amended energy conservation standards. While some of the technology options that do not increase UEF could still benefit consumers by reducing field energy consumption and/or improving performance, technologies that do not increase UEF would not be considered in an engineering analysis for a rulemaking, should one be initiated. In addition, some technologies may be screened out in the screening analysis, as discussed in section II.D of this RFI.

TABLE II.2—POTENTIAL TECHNOLOGIES FOR INCREASING EFFICIENCY

Description	Technologies considered in the April 2010 final rule	Technologies that do not affect UEF
Heat traps	X	
Improved insulation:		
Increased thickness	X	
Insulation on tank bottom	X	
Less conductive tank materials (*e.g.,* plastic)	X	
Foam insulation	X	
Pipe and fitting insulation.		
Advanced insulation types:		
Aerogel	X	
Vacuum panels	X	
Inert gas-filled panels	X	
Electronic ignition systems:		
Direct spark ignition	X	
Intermittent pilot ignition	X	
Hot surface ignition	X	
Improved burners:		
Pulse combustion	X	
Pressurized combustion.		
Side-arm heating	X	
Two-phase thermosiphon technology	X	
Modulating burners	X	
Reduced burner size (slow recovery)	X	
Heat exchanger improvements:		
Increased heat exchanger surface area	X	
Enhanced flue baffle	X	
Submerged combustion chamber	X	
Multiple flues	X	
Alternative flue geometry (Helical)	X	
U-Tube	X	
Condensing technology	X	
Direct-fired heat exchange	X	
Improved venting:		
Flue damper:.		
Powered (external supply)	X	
Powered (thermopile) Buoyancy	X	
Direct vent		X
Concentric direct venting	X	
Power vent	X	
Power-direct vent		X
Improved heat pump water heater components:		
Advanced compressors.		
Centrifugal fans.		
Increased heat exchanger surface area.		
Improved fan motors.		
Absorption heat pump water heaters.		
Adsorption heat pump water heaters.		
Carbon dioxide heat pump water heaters	X	
Thermophotovoltaic and thermoelectric generators	X	
Solar thermal.		
Improved controls:		
Timer controls	X	X
Modulating controls	X	
Intelligent and wireless controls and communication	X	X
Grid interactive capabilities.		
Self-cleaning	X	X

Issue C.3 DOE seeks information related to these technologies regarding their applicability to the current market and how these technologies may impact the efficiency of consumer water heaters as measured according to the DOE test procedure. DOE also seeks information on how these technologies may have changed since they were considered in the April 2010 Final Rule analysis. Specifically, DOE seeks information on the range of efficiencies or performance characteristics for products that are currently equipped with each technology option.

Issue C.4 DOE seeks information on the technologies listed in Table II.2 regarding their market adoption, costs, and any concerns with incorporating them into products (*e.g.,* impacts on consumer utility, potential safety concerns, manufacturing/production/implementation issues).

Issue C.5 DOE seeks comment on other technology options that it should consider for inclusion in its analysis and whether these technologies may impact product features or consumer utility.

D. Screening Analysis

The purpose of the screening analysis is to evaluate the technologies that improve equipment efficiency to determine which technologies will be eliminated from further consideration and which will be passed to the engineering analysis for further consideration.

DOE determines whether to eliminate certain technology options from further consideration based on the following criteria:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If a technology is determined to have significant adverse impact on the utility of the product for significant subgroups of consumers, or result in the unavailability of any covered product category or class with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.[3]

(4) *Adverse impacts on health or safety.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

10 CFR part 430, subpart C, appendix A, sections 4(a)(4) and 5(b).

Technology options identified in the technology assessment are evaluated against these criteria using DOE analyses and inputs from interested parties (*e.g.,* manufacturers, trade organizations, and energy efficiency advocates). Technologies that pass through the screening analysis are referred to as ''design options'' in the engineering analysis. Technology options that fail to meet one or more of the four criteria are eliminated from consideration.

Table II.3 summarizes the technology options that DOE screened out in the April 2010 Final Rule, as well as the applicable screening criteria.

TABLE II.3—PREVIOUSLY SCREENED OUT TECHNOLOGY OPTIONS FROM THE APRIL 2010 FINAL RULE

Screened technology option	EPCA criteria (X = basis for screening out)			
	Technological Feasibility	Practicability to manufacture, install, and service	Adverse impact on product utility	Adverse impacts on health and safety
Side-Arm Heater	X	X		
Flue Damper (Buoyancy Operated)				X
Directly Fired				X
Condensing Pulse Combustion	X	X		
Advanced Insulation Types	X	X		
Thermophotovoltaic and Thermoelectric Generators	X	X		
U-Tube Flue		X		
Reduced Burner Size			X	
Two-Phase Thermosiphon		X		
Carbon Dioxide (''CO_2'') Heat Pump Water Heater		X		

Issue D.1 DOE requests feedback on what impact, if any, the four screening criteria described in this section would have on consideration of each of the technology options listed with respect to consumer water heaters. Similarly, DOE seeks information regarding how these same criteria would affect consideration of any other technology options not already identified in this document with respect to their potential use in consumer water heaters.

Issue D.2 With respect to the screened out technology options listed in Table II.3, DOE seeks information on whether these options would, based on current and projected assessments regarding each of them, remain screened out under the four screening criteria described in section II.D of this RFI. With respect to each of these technology options, what steps, if any, could be (or have already been) taken to facilitate the introduction of each option as a means to improve the energy performance of consumer water heaters and the potential to impact consumer utility of the consumer water heaters.

Finally, DOE notes that the four screening criteria do not directly address the propriety status of design options. DOE only considers potential efficiency levels achieved through the use of proprietary designs in the engineering analysis if they are not part of a unique pathway to achieve that efficiency level (*i.e.,* if there are other non-proprietary technologies capable of achieving the same efficiency level).

E. Engineering Analysis

The engineering analysis estimates the cost-efficiency relationship of products at different levels of increased energy efficiency (''efficiency levels''). This relationship serves as the basis for the cost-benefit calculations for consumers, manufacturers, and the Nation. In determining the cost-efficiency relationship, DOE estimates the increase in manufacturer production cost (''MPC'') associated with increasing the efficiency of products above the baseline, up to the maximum technologically feasible (''max-tech'') efficiency level for each product class.

DOE historically has used the following three methodologies to generate incremental manufacturing costs and establish efficiency levels (''ELs'') for analysis: (1) The design-option approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency-level approach, which provides the relative

[3] For example, in the previous rulemaking for consumer water heaters, DOE did not consider reduced burner size due to the associated utility impact. See Chapter 4 of the technical support document for the April 2010 Final Rule (Available at: *https://www.regulations.gov/document?D=EERE-2006-STD-0129-0170*).

costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed data as to costs for parts and materials, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

1. Representative Product Characteristics

DOE intends to perform a teardown analysis on a set of models with ''representative'' characteristics to estimate the cost-efficiency relationship for consumer water heaters. For consumer storage-type water heaters, the tank volume significantly affects the energy consumed. That is, it takes more energy to heat a larger volume of water from a given temperature to a higher temperature. Additionally, the tank surface area increases as tank volume increases and, among other factors, the heat transfer rate is a function of surface area. Therefore, increased surface area increases the rate of heat transfer to the ambient air, which increases standby losses. This is reflected in the existing Federal energy conservation standards, as UEF is a function of the tank storage volume for storage water heaters.

DOE plans to conduct teardowns at specific storage volumes (referred to as representative storage volumes) that are the most common on the market, and extrapolate those results for the entire market. Based on information from the previous consumer water heater rulemaking and a survey of models currently on the market, DOE has preliminarily determined the characteristics of representative units for each product class. In particular, DOE examined the number of models available at distinct rated storage volumes and intends to use the most common storage volume as a representative characteristic in each product class. Storage volume typically does not vary for gas-fired and electric instantaneous water heaters, so DOE conducted a similar review of the available input rates of these instantaneous water heaters. Table II.4 presents the preliminary representative storage volumes and input rates for existing product classes of consumer water heaters.

TABLE II.4—PRELIMINARY REPRESENTATIVE VALUES BY PRODUCT CLASS FOR CONSUMER WATER HEATERS WITH UEF STANDARDS

Product class	Distinguishing characteristics (rated storage volume and input rating*)	Currently planned representative value(s)**	Other potential representative values under consideration
Gas-fired Storage Water Heater	≥20 gal and ≤55 gal	38 gal, Medium Draw Pattern	48 gal, High Draw Pattern.
	>55 gal and ≤100 gal	80 gal,† High Draw Pattern	67 gal, High Draw Pattern.
Oil-fired Storage Water Heater	≤50 gal	30 gal, High Draw Pattern	48 gal, High Draw Pattern.
Electric Storage Water Heater	≥20 gal and ≤55 gal	46 gal, Medium Draw Pattern	27 gal, Low Draw Pattern or 36 gal, Medium Draw Pattern.
	>55 gal and ≤120 gal	80 gal, High Draw Pattern	67 gal, High Draw Pattern.
Tabletop Water Heater	≥20 gal and ≤120 gal	36 gal, Low Draw Pattern	35 gal, Medium Draw Pattern.
Gas-fired Instantaneous Water Heater.	<2 gal and >50,000 Btu/h	0 gal and 199,000 Btu/h, High Draw Pattern.	0 gal and 180,000 Btu/h, High Draw Pattern.
Electric Instantaneous Water Heater.	<2 gal	0 gal and 3.5 kW,‡ Very Small Draw Pattern.	None.
Grid-Enabled Water Heater	>75 gal	80 gal, High Draw Pattern	100 gal, High Draw Pattern.

* Input rating is only used as a distinguishing characteristic for consumer gas-fired instantaneous water heaters. Models with input rates greater than 50,000 Btu/h currently have UEF standards.

** Storage volumes listed are the rated storage volume as determined under 10 CFR 429.17.

† DOE did not identify any consumer gas-fired storage water heater models with rated storage volume >55 gal and ≤100 gal on the market.

‡ The spread of input rates is evenly distributed across range of available inputs (*i.e.,* 0 kW to 12 kW).

Issue E.1 DOE requests feedback on the appropriate representative storage volumes and input capacities for each product class of consumer water heaters. DOE also requests feedback on whether there are additional representative characteristics that should be considered.

The energy conservation standards prescribed by EPCA apply more broadly than those listed in 10 CFR 430.32(d) and do not exclude water heaters based on storage volume or minimum input rate (in the case of consumer gas-fired instantaneous water heaters). (42 U.S.C. 6295(e)(1)) Furthermore, DOE's previous EF test procedure did not cover water heaters listed in Table II.5; however, DOE's updated UEF test procedure does cover these products. Because these products now have an applicable test procedure and are covered products, DOE is considering them in its analysis. Table II.5 presents these classes and their tentative representative characteristics. For many of these product classes, DOE has been unable to identify any models on the market, and, therefore, no representative values are provided in the table. For these classes, DOE has tentatively concluded that a lack of models indicates there are also no shipments. Thus, there is no potential for energy savings from amended standards for these classes at this time. If DOE ultimately confirms this to be true, DOE plans to merely convert the existing standards from EF to equivalent UEF standards for these product classes.

TABLE II.5—PRELIMINARY REPRESENTATIVE VALUES FOR PRODUCTS CURRENTLY WITHOUT UEF STANDARDS

Product class	Distinguishing characteristics (rated storage volume and input rating*)	Currently planned representative value(s)	Other potential representative values under consideration
Gas-fired Storage Water Heater	<20 gal ** >100 gal **		
Oil-fired Storage Water Heater	>50 gal **		
Electric Storage Water Heater	<20 gal ..... > 120 gal **	19 gal	6 gal, 12 gal, or 19.9 gal.
Tabletop Water Heater	<20 gal ** > 120 gal **		
Gas-fired Instantaneous Water Heater.	≥2 gal or ≤ 50,000 Btu/h **	20 gal	4 gal.
Oil-fired Instantaneous Water Heater.	All	5.1 gal	
Electric Instantaneous Water Heater.	≥2 gal **		

* Input rating is only used as a distinguishing characteristic for consumer gas-fired instantaneous water heaters. Models with input rates greater than 50,000 Btu/h currently have UEF standards.

** DOE was unable to find models on the market in this product class.

Issue E.2 DOE requests feedback on the appropriate representative storage volumes and specifically whether those identified in Table II.5 are reasonable. DOE also seeks feedback on whether products exist in the classes for which DOE was unable to find models on the market, and, if so, relevant information about those products and appropriate representative characteristics.

2. Efficiency Levels

a. Baseline Efficiency Levels

For each established product class, DOE selects a baseline efficiency as a reference point against which any changes resulting from energy conservation standards can be measured. For products with an existing energy conservation standard, the baseline efficiency level is typically the current minimum energy conservation standard. For products that do not have an existing minimum energy conservation standard, DOE considers the least-efficient product on the market as a baseline product. DOE will establish the baseline efficiency level for each product class in terms of UEF. For products where UEF standards are established, DOE will use those standards as the baseline level; for covered consumer water heaters where the standard has not yet been converted to UEF (*i.e.,* water heaters stated as being covered by EF standards from EPCA in Table II.1 of this RFI), DOE will undertake an analysis to translate the EF standard to an equivalent UEF standard, which will serve as the baseline level.[4] The baseline model in each product class represents the characteristics of common or typical products in that class. Typically, a baseline model is one that just meets the current minimum energy conservation standards and provides basic consumer utility.

DOE uses baseline units for comparison in several phases of the analyses, including the engineering analysis, life-cycle cost (''LCC'') analysis, payback period (''PBP'') analysis, and national impact analysis (''NIA''). In the engineering analysis, to determine the changes in price to the consumer that result from amended energy conservation standards, DOE compares the price of a baseline unit to the price of a unit at each higher efficiency level.

Consistent with this analytical approach, DOE tentatively plans to consider the current minimum energy conservation standards to establish the baseline efficiency levels for each product class. The current standards that rely on UEF are found at 10 CFR 430.32(d). For consumer water heaters not identified at 10 CFR 430.32(d), the standards rely on EF and are set forth at 42 U.S.C. 6295(e)(1). For storage water heaters, the baseline level varies based on the storage volume, and DOE would focus on the baseline efficiency standard for models at the representative storage volume. For the product classes without UEF-based standards (*i.e.,* products listed in Table II.5 of this RFI), DOE would translate the EF-based standards to UEF to determine the baseline level.

DOE has preliminarily identified a technology pathway for each product class. The preliminary baseline technology options that DOE has identified as being representative for each product class are discussed in section II.E.3 of this RFI.

Issue E.3 For the products listed in Table II.5 for this RFI as being covered by EPCA standards but not the included in the December 2016 Conversion Factor Final Rule that converted standards to UEF, DOE requests EF and UEF test data and/or other relevant information that could assist in the development of UEF-based standard levels to serve as the baseline levels.

Issue E.4 DOE requests feedback on the preliminary baseline technology options for each product class. (Note, DOE discusses its preliminary understanding of the technology options used in baseline products in section III.E.3 of this RFI) DOE requests feedback on whether there are any important features of baseline models (other than energy efficiency, storage volume, and input capacity) that should be accounted for in its analysis.

b. Intermediate Energy Efficiency Levels

DOE conducted a survey of the consumer water heater market to determine the designs and efficiencies of products that are currently available to consumers. For each representative product, DOE surveyed various manufacturers' product offerings to identify the efficiency levels that correspond to the highest number of models and the prevailing technologies used to reach those efficiency levels. By identifying the most prevalent energy efficiencies in the range of available

[4] For certain categories of consumer water heaters, these translations were not done during the December 2016 conversion factor rulemaking. DOE concluded that to start enforcing standards immediately would have been quite burdensome to industry. Further, DOE received a number of comments regarding the technical merits of the proposed conversions for these products and decided to defer finalizing and implementing UEF standards to allow for further consideration of those comments. 81 FR 96204, 96211 (Dec. 29, 2016).

products and examining the designs used at those efficiencies, DOE has preliminarily identified a technology path that manufacturers typically use to increase the energy efficiency of consumer water heating products (see section III.E.3 of this RFI).

DOE analyzes intermediate energy efficiency levels between the baseline and max-tech levels for each product class. The intermediate efficiency levels are generally representative of the most commonly available efficiency levels available on the market, and follow technology paths that manufacturers of consumer water heaters commonly use to maintain cost-effective designs while increasing energy efficiency. DOE conducted a preliminary review of manufacturer literature, the Air-Conditioning Heating and Refrigeration Institute (''AHRI'') directory of certified product performance,[5] and DOE's compliance certification database to compile efficiency information for a wide range of water heaters available on the market.[6] DOE also reviewed manufacturer literature to assess, to the extent possible, the technologies in use in consumer water heaters. DOE notes that different manufacturers may use different technology pathways to achieve the same efficiency level, and, if it determines that a rulemaking is necessary, the Department would expect to attempt to capture this in the analysis. Section II.E.3 presents the product classes and the respective technology pathways that DOE anticipates analyzing.

Issue E.5 DOE seeks comment on whether there are any key intermediate efficiency levels (in terms of UEF values) that should be considered in the analysis. DOE also seeks comment on common technology pathways to reach higher efficiency levels (*i.e.,* the order in which manufacturers implement energy-saving technologies). (Note, DOE discusses its preliminary understanding of the technology options used in consumer water heaters in section III.E.3 of this RFI.)

c. Maximum Technologically Feasible Efficiency Levels

The maximum available efficiency level is the efficiency level of the highest-efficiency unit currently available on the market. The current maximum available efficiencies are included in Table II.6 of this RFI.

TABLE II.6—MAXIMUM EFFICIENCY LEVELS CURRENTLY AVAILABLE AT REPRESENTATIVE VALUES

Product class	Distinguishing characteristics (rated storage volume and input rating*)	Currently planned representative value(s)**	Maximum UEF currently available
Gas-fired Storage Water Heater	≥20 gal and ≤55 gal	38 gal, Medium Draw Pattern	0.68
	>55 gal and ≤100 gal	80 gal, High Draw Pattern	†N/A
Oil-fired Storage Water Heater	≤50 gal	30 gal, High Draw Pattern	0.68
Electric Storage Water Heater	≥20 gal and ≤ 55 gal	46 gal, Medium Draw Pattern	3.55
	>55 gal and ≤120 gal	80 gal, High Draw Pattern	3.70
Tabletop Water Heater	≥20 gal and ≤120 gal	36 gal, Low Draw Pattern	0.81
Gas-fired Instantaneous Water Heater	<2 gal and >50,000 Btu/h	0 gal and 199,000 Btu/h, High Draw Pattern.	0.97
Oil-fired Instantaneous Water Heater	All	5.1 gal	††N/A
Electric Instantaneous Water Heater	<2 gal	0 gal and 3.5 kW, †††Very Small Draw Pattern.	0.98
Grid-Enabled Water Heater	>75 gal	100 gal, High Draw Pattern	0.93

* Input rating is only used as a distinguishing characteristic for consumer gas-fired instantaneous water heaters. Models with input rates greater than 50,000 Btu/h currently have UEF standards.

** Storage volumes listed are the rated storage volume as determined under 10 CFR 429.17.

† DOE did not identify any consumer gas-fired storage water heater models with rated storage volume >55 gal and ≤100 gal on the market.

†† There are currently no oil-fired instantaneous water heaters certified in the DOE compliance certification database.

††† The spread of input rates is evenly distributed across range of available inputs (*i.e.,* 0 kW to 12 kW).

DOE also determines the maximum technologically feasible (max-tech) improvement in energy efficiency for consumer water heaters. DOE defines a max-tech efficiency level to represent the theoretical maximum possible efficiency if all available design options are incorporated in a model. In many cases, the max-tech efficiency level is not commercially available because it is not economically feasible. Based on DOE's initial review of the consumer water heater market (as discussed in the previous section), DOE has preliminarily identified technology options commonly used to increase efficiency, including those associated with the max-tech efficiency level for each product class. DOE intends to analyze the available efficiency data to determine the UEF values that correspond to the technology options currently used to reach max-tech levels to determine the appropriate max-tech UEF values. DOE describes the technologies currently used to reach the max-tech efficiency levels in section II.E.3 of this RFI.

Issue E.6 DOE seeks input on whether the maximum available efficiency levels are appropriate for potential consideration as possible energy conservation standards for the products at issue—and if not, why not.

Issue E.7 DOE seeks feedback on what design options would be incorporated at a max-tech efficiency level, and the efficiencies associated with those levels. As part of this request, DOE also seeks information as to whether there are limitations on the use of certain combinations of design options. (Note, DOE discusses its preliminary understanding of the technology options in max-tech products in section III.E.3 of this RFI.)

3. Technology Pathway

DOE plans to consider and analyze various technologies for improving the energy efficiency of consumer water heaters. To accurately represent the current market in its analyses, DOE uses information from publicly-available

[5] AHRI, Directory of Certified Product Performance for Residential Water Heaters. (Available at: *https://www.ahridirectory.org/NewSearch?programId=24&searchTypeId=3*) (Last accessed: Dec. 2, 2019).

[6] DOE, Compliance Certification Database (Available at: *https://www.regulations.doe.gov/certification-data/CCMS-4-Water_Heaters.html#q=Product_Group_s%3A%22Water%20Heaters%22*) (Last accessed: Dec. 2, 2019).

product literature to determine which technologies are used in commercially-available products. DOE also identifies which technologies manufacturers would be most likely to include in products to meet potential amended energy conservation standards based on current designs observed on the market. DOE's preliminary understanding of the most prevalent technologies to obtain the intermediate and max-tech energy efficiency levels for each product class are described immediately below. DOE may revise the technology pathway for each category of consumer water heater in the preliminary analysis based on stakeholder comments and observations made during teardowns.

a. Gas-Fired Storage Water Heaters

As stated previously, DOE conducted a review of the currently-available consumer gas-fired storage water heaters on the market. DOE has observed that the baseline design typically consists of a standing pilot, atmospheric venting, and 2 inches of foam insulation. DOE found that models in the representative volume and draw pattern (40 gallons and medium draw pattern) use similar technology options to those found in the baseline (0.58 UEF) up to 0.61 UEF and can achieve higher efficiencies by increasing insulation thickness or increasing the heat exchange via improvements to the flue and/or baffling. To obtain efficiencies above 0.61 UEF, manufacturers can make use of the aforementioned options, and also typically remove the standing pilot ignition system in favor of an electronic ignition system and add a flue damper or power venting system, or some combination of these options. The highest efficiency products currently on the market utilize condensing technology. However, gas-fired heat pump water heater designs are currently under development and would likely result in higher efficiencies than those achieved by condensing gas-fired water heaters currently available on the market. In the event of any rulemaking resulting from this RFI, DOE would assess gas-fired heat pump water heater technology using the screening criteria discussed in section II.D to determine whether it is appropriate for consideration in the analysis.

Issue E.8 DOE requests feedback on the specific technologies used to increase efficiency of atmospherically-vented, standing pilot models that have efficiencies between the baseline (0.58 UEF) and 0.61 UEF. Specifically, how much insulation and/or baffling/heat exchange area is used at each level, and are there other design changes that increase the efficiency?

Furthermore, in any rulemaking resulting from this RFI, DOE tentatively intends to consider separately analyzing models that use standard and low-nitrogen oxide (''NO_X'') burners from those that use ultra-low-NO_X burners, as was done in the April 2010 Final Rule. However, due to the similarity between these categories of gas-fired storage water heaters, for this RFI, DOE did not identify a separate technology pathway for consumer gas-fired water heaters that use standard and low-NO_X burners from those that use ultra-low-NO_X burners.

Issue E.9 DOE requests feedback on the typical technology pathway for increasing the energy efficiency of consumer gas-fired storage water heaters. DOE is also interested in differences in the design pathway between water heaters with standard and low-NO_X burners and those with ultra-low-NO_X burners. This includes information on the order in which manufacturers would incorporate the different technologies to incrementally improve the efficiencies of products. DOE also requests feedback on whether the increased energy efficiency would lead to other design changes that would not occur otherwise. DOE is also interested in information regarding any potential impact of design options on a manufacturer's ability to incorporate additional functions or attributes in response to consumer demand.

Issue E.10 DOE requests feedback on whether gas-fired heat pump water heaters should be considered as the max-tech design for consumer gas-fired water heaters.

Issue E.11 DOE requests feedback on the thickness of insulation in products currently available on the market and what would be technologically feasible as the maximum insulation thickness. DOE has particular interest in understanding the insulation thickness beyond which an increase in thickness would not produce a noticeable effect on energy efficiency.

b. Electric Storage Water Heaters

For consumer electric storage water heaters with a rated storage volume of 50 gallons, the baseline efficiency level is achieved with electric resistance heating elements. To obtain slightly higher efficiencies, increased insulation or optimized geometry could be employed for water heaters using only electric resistance heating elements. For larger increases in efficiency, heat pump technology is used. From a review of manufacturer literature, DOE was unable to assess specific differences between the less-efficient and more-efficient heat pump water heater designs, up to the max-tech efficiency level. The magnitude of the increase between these levels suggests that improvements to the various heat pump components are responsible for these efficiency level increases. DOE intends to explore these efficiency and design differences further during its testing and teardown analysis.

Issue E.12 DOE requests feedback on the technology pathway for electric storage water heaters. This includes information on the order in which manufacturers would incorporate the different technologies to incrementally improve the efficiencies of products. DOE also requests feedback on whether the increased energy efficiency would lead to other design changes that would not occur otherwise. DOE is also interested in information regarding any potential impact of design options on a manufacturer's ability to incorporate additional functions or attributes in response to consumer demand.

Issue E.13 DOE requests feedback on heat pump components used in heat pump water heaters of varying efficiency, up to the max-tech level.

Issue E.14 DOE requests feedback on the insulation thickness and materials used in electric storage water heaters (both electric resistance and heat pump water heaters).

Issue E.15 DOE requests feedback on the maximum efficiency potential of CO_2 heat pump water heaters.

c. Oil-Fired Storage Water Heaters

DOE examined the representative storage volume of 30 gallons for consumer oil-fired storage water heaters. Very few models currently exist on the market compared to the other product classes. DOE found oil-fired storage water heaters at the representative storage volume with rated UEF values up to 0.68. Consumer oil-fired storage water heaters typically incorporate electronic ignition and power venting; therefore, efficiency improvement technologies are likely to include increasing the surface area within the flue, and to a lesser extent increasing the insulation thickness or upgrading the insulation material. Improvements to the flue include increased baffling, multiple flues, and/or multi-pass flues.

Issue E.16 DOE requests feedback on the technology pathway for consumer oil-fired water heaters and in particular the insulation material and thickness currently being used. This includes information on the order in which manufacturers would incorporate the different technologies to incrementally improve the efficiencies of products. DOE also requests feedback on whether the increased energy efficiency would

lead to other design changes that would not occur otherwise. DOE is also interested in information regarding any potential impact of design options on a manufacturer's ability to incorporate additional functions or attributes in response to consumer demand.

d. Tabletop Water Heaters

DOE has found that all tabletop water heaters currently on the market have a rated storage volume of either 38 or 40 gallons and a rated UEF of 0.81 and 0.90 in the low and high draw patterns, respectively. Tabletop water heaters use electric resistance elements to heat water and are contained in a rectangular box enclosure designed to slide into a kitchen countertop space with typical dimensions of 36 inches high, 25 inches deep, and 24 inches wide. 66 FR 4474, 4497 (Jan. 17, 2001). Efficiency improvements, if possible, would most likely be accomplished though upgrading the insulation material and/or increasing the insulation thickness.

Issue E.17 DOE requests feedback on what materials and methods are currently being used to insulate tabletop water heaters, and whether there are any technologies that can be used to improve the energy efficiency of these products. DOE also requests information on potential impacts any such technologies would have on the capacity or other performance-related features of tabletop water heaters.

e. Gas-Fired Instantaneous Water Heaters

Currently, all consumer gas-fired instantaneous water heaters, including those at the baseline, appear to use electronic ignition along with power venting. Based on an examination of literature for products currently available in the market, the primary method for increasing the energy efficiency of consumer gas-fired instantaneous water heaters is typically through increasing the heat exchanger surface area. As the heat exchanger surface area increases, heat transfer is improved, resulting in an increase in the efficiency of the unit. In addition, the heat transfer between flue gases and the water can be improved to the point where the flue gases are cooled below the dew point, resulting in condensation within the heat exchanger. Therefore, at higher efficiency levels, manufacturers design heat exchangers for condensing operation that are capable of managing the condensate, which include materials that can withstand corrosive condensate and methods for condensate disposal.

Issue E.18 DOE requests feedback on its assessment of the technologies used at the baseline for consumer gas-fired instantaneous water heaters, as well as the technologies used to improve efficiency.

f. Electric Instantaneous Water Heaters

Consumer electric instantaneous water heaters use electric resistance heating along with low flow rates to provide hot water, typically for applications with lower demand, such as handwashing. Most electric instantaneous water heaters that DOE identified currently on the market have rated UEF values close to 1. This is likely the result of minimal losses from the electric resistance heating elements, combined with a lack of standby losses due to the low or negligible amount of stored water. Consequently, DOE has not identified any technology options that are currently being used or could be used to improve the energy efficiency of electric instantaneous water heaters.

Issue E.19 DOE requests feedback on the technology options available for improving the energy efficiency of consumer electric instantaneous water heaters, if any.

g. Oil-Fired Instantaneous Water Heaters

DOE has found that consumer oil-fired instantaneous water heaters exist on the market. These water heaters use electronic ignition, are direct vented, and force air through the unit. Currently, EF and UEF values are not available for these water heaters, but the manufacturer literature advertises the ''efficiency'' as being up to 88 percent for these models.

Issue E.20 DOE requests feedback on the availability of consumer oil-fired instantaneous water heaters and the technology options available to improve UEF.

h. Grid-Enabled Water Heaters

As a preliminary step for this RFI, DOE reviewed the current market for grid-enabled water heaters. Based on a review of product literature for grid-enabled designs, DOE has found that these water heaters use electric resistance heating elements and typically have between two to three inches of foam insulation. Plastic, stainless steel, and stone-lined steel storage tanks are currently available on the market, and these models do not use an anode rod. Glass-lined steel tanks are also available, and these models do use an anode rod. At the 96-gallon representative storage volume, all UEF ratings are at or just above the minimum efficiency standard.

Issue E.21 DOE requests feedback on the technology options available for improving the energy efficiency of grid-enabled water heaters.

4. Manufacturer Production Costs and Manufacturer Selling Prices

As described at the beginning of this section, the main outputs of the engineering analysis are cost-efficiency relationships that describe the estimated increases in manufacturer production cost associated with higher-efficiency products for the analyzed product classes. For the April 2010 Final Rule, DOE developed the cost-efficiency relationships by first identifying specific efficiency levels and the technologies incorporated at those levels. DOE then performed reverse-engineering analysis to estimate the typical cost at each efficiency level from the baseline to the max-tech. 75 FR 20112, 20141 (April 16, 2010). For this analysis, DOE plans to use a similar approach to that used in the April 2010 Final Rule, by identifying efficiency levels and performing reverse-engineering on models from various manufacturers to identify the technology(ies) implemented at each efficiency level and the cost to achieve that level. DOE plans to use the data gathered in the reverse-engineering analysis to develop the manufacturing cost-efficiency relationship.

Issue E.22 DOE seeks input on the increase in MPC associated with incorporating each particular design option. Specifically, DOE is interested in whether and how the costs estimated for design options in the April 2010 Final Rule have changed since the time of that analysis. DOE also requests information on the investments necessary to incorporate specific design options, including, but not limited to, costs related to new or modified tooling (if any), materials, engineering and development efforts to implement each design option, and manufacturing/production impacts.

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. For the April 2010 Final Rule, DOE estimated the manufacturer markups as 1.31 for gas-fired storage water heaters, 1.28 for electric storage water heaters, 1.30 for oil-fired storage water heaters, and 1.45 for gas-fired instantaneous water heaters. See chapter 5 of the April 2010 Final Rule technical support document (''TSD'').[7]

Issue E.23 DOE requests feedback on whether the manufacturer markups of 1.31, 1.28, 1.30, and 1.45 are still

[7] Available at: *https://www.regulations.gov/document?D=EERE-2006-STD-0129-0149.*

appropriate for gas-fired storage water heaters, electric storage water heaters, oil-fired storage water heaters, and gas-fired instantaneous water heaters, respectively.

In addition, for products where changes to the energy conservation standard are likely to cause a large difference in the size of the product, DOE sometimes considers shipping costs incurred by manufacturers to ship the product to their first customer separately from the manufacturer markup. In such cases, manufacturer selling price is calculated as the manufacturer production cost multiplied by the manufacturer markup, and shipping price is added (as shipping cost is not typically marked up). DOE plans to investigate this approach for consumer water heaters to determine how dimensions may change with increasing efficiency and whether such changes would increase the shipping costs for manufacturers.

Issue E.24 DOE requests comment on how the cost to ship a consumer water heater changes with efficiency.

F. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* for wholesalers, contractors, general contractors, mobile home manufacturers, and mobile home dealers) in the distribution chain and sales taxes to convert the MSP derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analyses and other analyses. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

1. Distribution Channels

In generating end-user price inputs for the LCC analysis and NIA, DOE must identify distribution channels (*i.e.,* how the products are moved from the manufacturer to the consumer), and estimate relative sales volumes through each channel.

Markups depends on the distribution channels for a product (*i.e.,* how the product passes through the chain of commerce from the manufacturer to the customer). Two different markets exist for consumer water heating systems: (1) Replacements and new owners [8] and (2) new construction. Based on several references, DOE plans to determine the main distribution channels for each water heater product class and the fraction of shipments through each channel.[9]

a. Replacement and New Owner

For replacement and new owner applications, manufacturers sell mainly to either plumbing distributors or retailers (including retailers that sell online [10]). The four main distribution paths that DOE intends to consider are: (1) A plumbing distributor sells a water heater to a contractor, who then sells it to a consumer and installs it, (2) a retailer sells a water heater to a contractor, who then sells it to a consumer and installs it, (3) a retailer sells a water heater to the consumer, who hires a contractor to install it, or (4) a retailer sells a water heater to the consumer, who self-installs it.[11] In addition, DOE plans to consider distribution channels where the manufacturer sells the consumer water heater directly to a commercial consumer through a national account or the commercial consumer purchases the consumer water heater directly through a wholesaler. These channels reflect those cases where the installation can be accomplished by site personnel.

In summary, DOE plans to characterize the replacement and new owner market distribution channels for consumer water heating systems as follows:

Manufacturer → Wholesaler → Contractor → Consumer
Manufacturer → Retail Store → Contractor → Consumer
Manufacturer → Retail Store → Consumer [Contractor-Installed]
Manufacturer → Retail Store → Consumer [Self-Installed]
Manufacturer → Wholesaler → Commercial Consumer [12]
Manufacturer → National Account → Commercial Consumer [13]

b. New Construction

The new construction distribution channel for consumer water heaters includes an additional link in the chain—the general contractor. In most new construction applications, the consumer water heater is part of the overall plumbing package installed by a plumbing contractor or, in the case of large building companies, by its own master plumber and crew. A plumbing contractor usually purchases the consumer water heater from a plumbing distributor, and in this case, DOE includes a contractor mark-up. In the

[8] New owners are defined as existing buildings that acquire a consumer water heater for the first time or get a new category of consumer water heater during the analysis period.

[9] Clear Seas Research, 2019 Mechanical Systems—Water Heater CLEAReport (Dec. 2019) (Available at: *https://clearseasresearch.com/product/2019-mechanical-systems-water-heater/*) (Last accessed Dec. 2, 2019); A.O. Smith, Autumn 2019 Analyst Presentation (November 2019) (Available at: *http://investor.aosmith.com/events-and-presentations*) (Last accessed Dec. 2, 2019); Northwest Energy Efficiency Alliance (''NEEA''), Water Heater Market Characterization Report (April 2018) (Available at: *https://neea.org/img/documents/water-heater-market-characterization-report.pdf*) (Last accessed Dec. 2, 2019); Consortium for Energy Efficiency (''CEE''), Residential Water Heating Initiative (March 2018) (Available at: *https://library.cee1.org/system/files/library/13557/CEE_ResWaterHeating_Initiative_16Mar2018.pdf*) (Last accessed Dec. 2, 2019); Energy Trust of Oregon, Existing Homes Gas Water Heater Market Research Report (Jan 2016) (Available at: *https://energytrust.org/wp-content/uploads/2016/12/Gas_Water_Heater_Market_Research_Report_Public_FINAL_wSR.pdf*) (Last accessed Dec. 2, 2019); California Energy Commission (''CEC''), Residential Water Heating Program, Facilitating the Market Transformation to Higher Efficiency Gas-Fired Water Heating (December 2012) (Available at: *http://www.energy.ca.gov/2013publications/CEC-500-2013-060/CEC-500-2013-060.pdf*) (Last accessed Dec. 2, 2019); NEEA, 2011 Water Heater Market Update (Jan. 2012) (Available at: *https://neea.org/img/uploads/2011WaterHeaterMarketUpdateA273DBB87CA3.pdf*) (Last accessed Dec. 2, 2019); ENERGY STAR, Water Heater Market Profile: Efficiency Sells (Sept. 2010) (Available at: *https://www.energystar.gov/ia/partners/prod_development/new_specs/downloads/water_heaters/Water_Heater_Market_Profile_2010.pdf*) (Last accessed Dec. 2, 2019); ENERGY STAR, Water Heater Market Profile: New Technology, New Savings (Sept. 2009) (Available at: *https://www.energystar.gov/ia/partners/prod_development/new_specs/downloads/water_heaters/Water_Heater_Market_Profile_Sept2009.pdf*) (Last accessed Dec. 2, 2019); CEE, High-Efficiency Residential Gas Water Heating Initiative (March 2008); A.O. Smith, Water Heater Marketplace (2008) (Available at: *https://www.energystar.gov/sites/default/files/asset/document/AOSmith_General_Session.pdf*) (Last accessed Dec. 2, 2019); NEEA, Residential Water Heater Market (July 2006) (Available at: *https://neea.org/img/uploads/AssessmentoftheResidentialWaterHeaterMarketingNWC6F59C4D2EEB.pdf*) (Last accessed Dec. 2, 2019); Lawrence Berkeley National Laboratory (''LBNL''), The LBNL Water Heater Retail Price Database (Oct. 2000) (Available at: *https://www.osti.gov/biblio/775102*) (Last accessed Dec. 2, 2019).

[10] Online sales includes sales through home improvement and hardware store websites (such as Home Depot, Lowe's, Ace Hardware, and Menards), as well as online-only websites (such as *amazon.com*). DOE does not have enough information at this point to compute a separate markup estimate the online sales distribution channel. DOE intends to assume that the retailer mark-up is similar to the online sales mark-up.

[11] In some cases, the retail outlet provides installation as part of a package. In others, the retail outlet links the customer to a contractor for installation. Self-installation is likely more common for electric than for gas water heaters due to the greater complexity of replacing a gas unit. This is consistent with data from ENERGY STAR's 2010 Water Heater Market Profile study that show that consumers are more likely to install electric storage water heaters themselves compared to other categories of consumer water heaters.

[12] This represents consumer water heaters that are purchased by commercial consumers for use in a commercial applications. Unlike commercial consumers, residential consumers typically are unable to purchase directly from a wholesaler.

[13] This represents consumer water heaters that are purchased by commercial consumers for use in a commercial applications. Unlike commercial consumers, residential consumers typically are unable to purchase from manufacturers through a national account.

case of mobile home new construction, the distribution channel includes a mobile home manufacturer and mobile home dealer. In addition, similar to the replacement and new owner distribution channel, DOE plans to consider distribution channels in which the manufacturer sells the consumer water heater directly to a commercial consumer through a national account or the commercial consumer purchases the consumer water heater directly through a wholesaler.

In the case of new construction, DOE plans to characterize the distribution channels as follows:

Manufacturer → Wholesaler → Contractor → General Contractor → Consumer
Manufacturer → Retailer → Contractor → General Contractor → Consumer
Manufacturer → Wholesaler → General contractor → Consumer
Manufacturer → Retailer → General contractor → Consumer
Manufacturer → Wholesaler → Consumer
Manufacturer → Retailer → Commercial Consumer [14]
Manufacturer → National Account → Commercial Consumer [15]
Manufacturer → Mobile Home Manufacturer → Mobile Home Dealer → Consumer

Issue F.1 DOE seeks input on whether the distribution channels described above are appropriate for each of the consumer water heaters product classes and are sufficient to characterize distributions in this market. In particular, DOE seeks input on the appropriate distribution channel for grid-enabled water heaters.

Issue F.2 DOE seeks input on the percentage of consumer water heaters being distributed through the different distribution channels and whether the share of products through each channel varies based on product capacity, water heater product class, or water heater technology. In particular, DOE seeks input about the percentage of consumer water heaters being distributed through online sales and whether the percentage is likely to increase in the future.

2. Mark-Ups

To develop mark-ups for the parties involved in the distribution of the product, DOE plans to utilize several sources, including: (1) Form 10–K reports [16] from the main consumer water heater wholesalers [17] and retailers (for wholesalers and retailers); 3. the Heating, Air Conditioning & Refrigeration Distributors International (''HARDI'') 2013 Profit Report [18] (for wholesalers); 3.U.S. Census 2017 Annual Retail Trade Survey data [19] (for retailers); and 3. Census Bureau 2012 Economic Census data [20] on the residential and commercial building construction industry (for general contractors, mechanical contractors, retailers, and mobile home manufacturers). DOE plans to use the 2005 Air Conditioning Contractors of America's (''ACCA'') Financial Analysis on the Heating, Ventilation, Air-Conditioning, and Refrigeration (''HVACR'') contracting industry [21] to disaggregate the mechanical contractor mark-ups into replacement and new construction markets. DOE also plans to use several sources for the derivation of the mobile home dealer mark-up.[22]

Issue F.3 DOE seeks recent data and recommendations regarding data sources to establish the markups for the parties involved with the distribution of the consumer water heating products.

G. Energy Use Analysis

As part of a typical rulemaking process, DOE conducts an energy use analysis to identify how products are used by consumers, and thereby determine the energy savings potential of energy efficiency improvements. The purpose of the energy use analysis is to determine the annual energy consumption of consumer water heaters at different efficiencies in representative U.S. single-family homes, manufactured housing, multi-family residences, and commercial buildings, and to assess the energy savings potential of increased consumer water heater efficiency. The energy use analysis estimates the range of energy use of consumer water heaters in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performs, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards. DOE will estimate the annual energy consumption of consumer water heaters at specified energy efficiency levels across a range of applications, house or building types, and climate zones. The annual energy consumption includes use of natural gas, liquefied petroleum gas (''LPG''), oil, or electricity for hot water production, as well as use of electricity for the auxiliary components.

1. Building Sample

DOE intends to base the energy use analysis on key characteristics from the Energy Information Administration's (''EIA'') 2015 Residential Energy Consumption Survey (''RECS'') [23] for the subset of building types that use consumer water heating products covered by the standard. DOE also plans to look at the use of consumer water heaters in commercial applications, for which it plans to include characteristics from EIA's 2012 Commercial Building Energy Consumption Survey (''CBECS'') [24] for a subset of building

[14] This represents consumer water heaters that are purchased by commercial consumers for use in a commercial applications.

[15] This represents consumer water heaters that are purchased by commercial consumers for use in a commercial applications. Unlike commercial consumers, residential consumers typically are unable to purchase from manufacturers through a national account.

[16] U.S. Securities and Exchange Commission, *SEC 10–K Reports* (Available at *https://www.sec.gov/*) (Last accessed Dec. 2, 2019).

[17] Clear Seas Research, *2017 Top List—Premier Distributors—Plumbing, Heating, Cooling* (Available at *https://clearseasresearch.com/product/2017-top-list-premier-distributors-plumbing-heating-cooling/*) (Last accessed Dec. 2, 2019).

[18] HARDI, *2013 HARDI Profit Report* (Available at: *http://hardinet.org/*) (Last accessed Dec. 2, 2019).

[19] U.S. Census Bureau, *2017 Annual Retail Trade Survey Data* (Available at *https://www.census.gov/programs-surveys/arts.html*) (Last accessed Dec. 2, 2019). Note the 2018 Annual Retail Trade Survey data are expected to be released in April 2020. Until that time, 2017 Annual Retail Trade Survey remains the most recent full data release.

[20] U.S. Census Bureau, *2012 Economic Census Data* (Available at: *https://www.census.gov/programs-surveys/economic-census.html*) (Last accessed Dec.2, 2019). Note that the 2017 Economic Census data are planned to be fully released by late 2020. Until that time, 2012 Economic Census remains the most recent full data release.

[21] ACCA, *Financial Analysis for the HVACR* Contracting Industry (2005) (Available at: *https://www.acca.org/store*) (Last accessed Dec. 2, 2019).

[22] Reference for Business Encyclopedia of Business, 2nd ed. SIC 6515 Operators of Residential Mobile Home Sites (Available at: *http://www.referenceforbusiness.com/industries/Finance-Insurance-Real-Estate/Operators-Residential-Mobile-Home-Sites.html*) (Last accessed Dec. 2, 2019); Cook, P., State Board of Equalization, Staff Legislative Bill Analysis, Assembly Bill 1474 (2011) (Available at: *http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1451-1500/ab_1474_cfa_20090515_114322_asm_comm.html*) (Last accessed Dec. 2, 2019); F. Walter, Comments on the Energy Conservation Program for Consumer Products: Standards for Furnaces & Boilers, DOE Docket Number EE–RM/STD–01–350, Comment No.13 (2001) Manufactured Housing Institute (Available at: *https://www.regulations.gov/#!documentDetail;D=EERE-2006-STD-0102-0042*) (Last accessed Dec. 2, 2019).

[23] EIA, 2015 RECS (Available at: *http://www.eia.gov/consumption/residential/*) (Last accessed Dec. 2, 2019). Note the EIA plans to conduct the 2020 RECS sometime in 2020, and it usually takes a couple of years to fully release the data. Until that time, 2015 RECS remains the most recent full data release.

[24] EIA, 2012 CBECS (Available at: *http://www.eia.gov/consumption/commercial/*) (Last accessed Dec. 2, 2019). Note the 2018 CBECS data are expected to be released in late 2020. Until that time, 2012 CBECS remains the most recent full data release.

types that use consumer water heating products covered by this standard.

RECS and CBECS survey data include information on the physical characteristics of building units, water heating products used, size of the products in terms of rated volume, fuels used, energy consumption and expenditures, and other characteristics.[25] DOE intends to use available shipments data by water heater size to disaggregate the sample into the considered product classes.[26] DOE will also consult Building America's 2015 report, ''Strategy Guideline: Proper Water Heater Selection,'' [27] as well as American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE'') [28] and Electric Power Research Institute (''EPRI'') [29] handbooks, which contain data on the typical categories and sizes (both input capacity and rated volume) of consumer water heaters used for different building types and applications, and can be used to compare to, supplement, and corroborate the RECS and CBECS data. In addition, DOE intends to review other data sets (*e.g.,* data from the End-Use Load and Consumer Assessment Program (''ELCAP''),[30] 2016 Residential Building Stock Assessment for the Northwest,[31] 2014 Commercial Building Stock Assessment for the Northwest,[32] 2015 Residential Statewide Baseline Study of New York State,[33] 2009 Residential Appliance Saturation Study (''RASS''),[34] and 2006 California Commercial End-Use Survey (''CEUS'') [35]) to compare to RECS 2015 and CBECS 2012 data. Based on these data, DOE will develop a representative population of buildings for each consumer water heater product class. Calculating the hot water use for the sampled households requires assigning a specific water heater size (rated volume). DOE plans to use the RECS sizing data together with the available shipments and models data to assign the consumer water heaters sizes for each sampled RECS household.

Issue G.1 DOE seeks shipments data and input on typical categories (in terms of product classes) and sizes (including fuel type, input capacity, and rated volume) of consumer water heaters used for different building types and applications.

Issue G.2 DOE seeks input and sources of data or recommendations to support sizing of consumer water heaters typical in consumer water heater applications.

Issue G.3 DOE requests comment on the fraction of installations and classes of consumer water heaters that are used in commercial applications.

2. Hot Water Use

To estimate the annual hot water use of each sampled unit, DOE intends to use the RECS 2015 and CBECS 2012 estimates of water heating annual energy consumption [36] together with the existing water heater's estimated efficiency and other water heater characteristics. DOE intends to assume that some households or buildings have multiple water heaters, with the hot water use split evenly between them. The efficiency of the existing water heater will be determined using the consumer water heater vintage (the year of installation of the product) provided by RECS and historical efficiency data for water heaters.

DOE plans to compare the results of its methodology to total hot water use from field data, models based on field data (such as the 2015 Florida Solar Energy Center study [37] and the model used in the April 2010 Final Rule (75 FR 20112) [38]), and any other model or data available in the literature. These total hot water use models typically account for the number and ages of the people who live in the household, the way they consume hot water, the presence of hot-water-using appliances, the tank size and thermostat set point of the consumer water heater, and the climate in which the residence is situated. DOE also plans to consider data regarding the total amount of water drawn per day for various draw patterns based on the field data collated by the Lawrence Berkeley National Laboratory (''LBNL'') and other sources.[39]

For each analyzed consumer water heater and building type combination, DOE plans to determine the typical water heating usage profiles, water volumetric loads, and hot water usage temperatures using data from the ASHRAE Heating, Ventilation, and Air-Conditioning (''HVAC'') Systems and Equipment Handbook, EPRI Handbook, and reports from National Renewable Energy Laboratory (''NREL'') [40] and LBNL.[41] For residential applications,

[25] Neither RECS nor CBECS provide data on whether the water heater used in the building is a consumer water heater covered in this rulemaking (*i.e.,* water heating could also be provided by a consumer boiler, commercial boiler, or commercial water heater). Therefore, DOE intends to develop a methodology for adjusting its building sample to reflect buildings that use a consumer water heater covered in this rulemaking based on ASHRAE and EPRI handbooks and other references on how consumer water heaters are typically used in residential and commercial applications.

[26] If shipments data are not available for a considered product class, DOE intends to use any other available data including number of available models.

[27] Building America, DOE, Strategy Guideline: Proper Water Heater Selection (Available at: *https://www1.eere.energy.gov/buildings/publications/pdfs/building_america/strategy-guideline-water-heater-selection.pdf*) (Last accessed Dec. 2, 2019).

[28] ASHRAE, ASHRAE Handbook of HVAC Applications: Chapter 50 (Service Water Heating) (2011) pp. 50.1 to 50.32.

[29] EPRI, Commercial Water Heating Applications Handbook (1992) CU–6666.

[30] Bonneville Power Administration, ELCAP Data from 1986 to 1989 (2012) (Available at: *http://rtf.nwcouncil.org/ELCAP/*) (Last accessed Dec. 2, 2019).

[31] NEEA, Residential Building Stock Assessment (2016) (Available at: *https://neea.org/data/residential-building-stock-assessment*) (Last accessed Dec. 2, 2019).

[32] NEEA, Commercial Building Stock Assessment (2014) (Available at: *https://neea.org/data/commercial-building-stock-assessments*) (Last accessed Dec. 2, 2019).

[33] New York State Energy Research and Development Authority (''NYSERDA''), Residential Statewide Baseline Study of New York State (July 2015) (Available at: *https://www.nyserda.ny.gov/About/Publications/Building-Stock-and-Potential-Studies/Residential-Statewide-Baseline-Study-of-New-York-State*) (Last accessed Dec. 2, 2019).

[34] CEC, 2009 RASS (2009) (Available at: *https://ww2.energy.ca.gov/appliances/rass/previous_rass.html*) (Last accessed Dec. 2, 2019). Note the 2019 RASS data are expected to be completed in March 2020. Until that time, 2009 RASS remains the most recent full data release.

[35] CEC, 2006 CEUS (2006) (Available at: *http://www.energy.ca.gov/ceus/2006_enduse.html*) (Last accessed Dec. 2, 2019).

[36] EIA estimates the equipment's annual energy consumption from the household's utility bills using conditional demand analysis.

[37] Danny Parker, Fairey, P, and Lutz, J., Estimating Daily Domestic Hot Water Use in North American Homes, Florida Solar Energy Center (June 2015) (Available at: *http://www.fsec.ucf.edu/en/publications/pdf/FSEC-PF-464-15.pdf*) (Last accessed Dec. 2, 2019).

[38] Lutz, J.D., X. Liu, J.E. McMahon, C. Dunham, L.J. Shown, and Q.T. McGrue, Modeling Patterns of Hot Water Use in Households (1996) LBNL (LBL–37805) (Available at: *https://ees.lbl.gov/sites/all/files/modeling_patterns_of_hot_water_use_in_households_lbl-37805_rev.pdf*) (Last accessed Dec. 2, 2019).

[39] The Water Research Foundation, Residential End Uses of Water, Version 2 (June 2019) (Available at: *https://www.waterrf.org/research/projects/residential-end-uses-water-version-2*) (Last accessed Dec. 2, 2019); Kruis, N., B. Wilcox, J. Lutz, C. Barnaby, Development of Realistic Water Draw Profiles for California Residential Water Heating Energy Estimation (August 2017) (Available at: *http://www.ibpsa.org/proceedings/BS2017/BS2017_237.pdf*) (Last accessed Dec. 2, 2019); Lutz, JD, Renaldi, Lekov A, Qin Y, and Melody M., ''Hot Water Draw Patterns in Single Family Houses: Findings from Field Studies,'' LBNL Report number LBNL–4830E (May 2011) (Available at: *http://www.escholarship.org/uc/item/2k24v1kj*) (Last accessed Dec. 2, 2019); NREL, Tool for Generating Realistic Residential Hot Water Event Schedules (August 2010) (Available at: *https://www.ibpsa.us/sites/default/files/publications/SB10-PPT-TS06B-01-Hendron.pdf*) (Last accessed Dec. 2, 2019).

[40] NREL, DOE Commercial Reference Building Models of the National Building Stock (February 2011) (Available at: *https://www.nrel.gov/docs/fy11osti/46861.pdf*) (Last accessed Dec. 2, 2019).

[41] Huang, J., Akbari, H., Rainer, L., Ritschard, R., 481 Prototypical Commercial Buildings for 20

DOE plans to determine average set point temperature by using the 2006–2019 survey data from plumbing/hydronic heating contractor firms.[42] These data will capture the variability in water heating use due to factors such as building activity, schedule, occupancy, water supply temperature, tank losses, cycling losses, and distribution system piping losses. DOE intends to derive the inlet water temperature using an approach developed by NREL.[43] This approach accounts for seasonal variations in inlet water temperature as a function of annual average outdoor air temperature. The monthly average inlet water temperature varies directly with the average annual outdoor air temperature corrected by an offset term.

DOE also plans to consider market changes or future efficiency standards in technologies that reduce water heating loads in residential housing or commercial buildings using consumer water heaters, such as more-efficient clothes washers.

Issue G.4 DOE seeks field data and input on representative hot water usage, water heating usage load profile, and representative hot water usage temperatures for consumer water heaters used in various consumer and commercial water heater applications.

Issue G.5 DOE seeks input on the historical distribution of product efficiencies in the building population for different product classes.

Issue G.6 DOE seeks input on water use data by season to more accurately calculate the inlet water temperature.

3. Determination of Consumer Water Heating Energy Use

In the past, DOE calculated the field energy use of water heaters using a simplified energy equation, the consumer water heater analysis model (''WHAM''),[44] and modified WHAM equations developed for the April 2010 Final Rule. WHAM accounts for a range of operating conditions and energy efficiency characteristics of water heaters. To describe energy efficiency characteristics of water heaters, WHAM uses parameters that were also used in the previous consumer water heater test procedure. DOE intends to create a similar set of equations to determine field energy use based on the most recent consumer water heater test procedure, which determines UEF.

For gas-fired and oil-fired water heaters, DOE plans to estimate the auxiliary electricity use associated with water heater operation, such as that consumed by the electronic ignition, controls, power vent fan, standby mode and off mode, *etc.* For heat pump water heaters, DOE plans to take into account that the energy efficiency and consumption are dependent on ambient temperature when in heat pump mode and the amount of time the unit operates using the electric resistance mode. DOE also intends to estimate the impact of heat pump water heaters on the home's space heating, air conditioning, and dehumidifier operation.[45] DOE also plans to take into account the electricity use associated with condensate withdrawal, such as that consumed by the condensate pump or heat tape for condensing and heat pump water heater technologies. For grid-enabled water heaters, DOE plans to use common draw patterns and utility program structure (*i.e.,* turned off at a fixed schedule or turned off during peak periods only) to determine the electricity use and match it with the appropriate electricity tariff structure.

Issue G.7 DOE requests field or test energy use data or other relevant information that could assist in the development of an equation or set of equations based on the latest consumer water heater test procedure that can calculate field water heating energy use for each product class.

Issue G.8 DOE requests comment on the methodology for determining energy use for each consumer water heater product class, including the impact of ambient conditions and draw patterns.

Issue G.9 DOE requests comment on the methodology for determining energy use of heat pump water heaters, including the impact of ambient conditions and draw patterns on efficiency, as well as taking into account the cooling effect and humidity withdrawal of heat pump water heaters installed in conditioned spaces.

Issue G.10 DOE requests comment on the methodology for determining energy use for grid-enabled water heaters.

Issue G.11 DOE requests comment on the fraction of installations and classes of consumer water heaters used for other applications such as space heating (in hydronic systems or fan-coils).

Issue G.12 DOE seeks input on the fraction of installations and types of buildings that use recirculation loops associated with consumer water heaters and the impact of recirculation loops on water heater performance.

H. Life-Cycle Cost and Payback Period Analysis

DOE plans to conduct LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for consumer water heaters. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost.

DOE intends to analyze the potential for variability by performing the LCC and PBP calculations on a representative sample of individual consumers. DOE plans to utilize the sample of buildings developed for the energy use analysis and the corresponding simulation results.[46] Within a given building, one or more consumer water heater units may serve the building's water heating needs, depending on the hot water requirements of the building. Therefore, DOE intends to express the LCC and PBP results for each of the individual consumer water heaters installed in the building. DOE plans to model uncertainty in many of the inputs to the LCC and PBP analysis using Monte Carlo simulation and probability distributions. As a result, the LCC and PBP results will be displayed as distributions of impacts compared to the no-new-standards case (*i.e.,* without amended standards) conditions.

Issue H.1 DOE requests comment on the overall methodology that it intends

Urban Market Areas, LBL–29798 (April 1991) (Available at: *http://simulationresearch.lbl.gov/dirpubs/29798.pdf*) (Last accessed Dec. 2, 2019).

[42] Clear Seas Research, 2019 Mechanical Systems—Water Heater CLEAReport (Dec. 2019) (Available at: *https://clearseasresearch.com/product/2019-mechanical-systems-water-heater/*) (Last accessed Dec. 2, 2019).

[43] Burch, J.a.C.C., Towards Development of an Algorithm for Mains Water Temperature, NREL (Available at: *https://www.osti.gov/scitech/biblio/981988*) (Last accessed Dec. 2, 2019); Hendron, R., R. Anderson, C. Christensen, M. Eastment, and P. Reeves, Development of an Energy Savings Benchmark for All Residential End-Uses (August 2004) NREL, Report No. NREL/BK–610–28044 (Available at: *http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.577.9027&rep=rep1&type=pdf*) (Last accessed Dec. 2, 2019).

[44] Lutz, J., C.D. Whitehead, A. Lekov, D. Winiarski, and G. Rosenquist, WHAM: A Simplified Energy Consumption Equation for Water Heaters, in 1998 American Council for an Energy-Efficient Economy (''ACEEE'') Summer Study on Energy Efficiency in Buildings (1998): Asilomar, CA. p. 1.171–1.183 (Available at: *https://www.osti.gov/biblio/20001984-wham-simplified-energy-consumption-equation-water-heaters*) (Last accessed Dec. 2, 2019).

[45] Heat pump water heaters draw heat from the space in which they are located. Thus, when such a water heater is located in a conditioned space, its operation affects the load that the home's space heating and air conditioning equipment must meet. When the home is being heated, use of the heat pump water heater increases the heating load, and when the house is being cooled, its use decreases the cooling load.

[46] Specifically, DOE plans to utilize the household types defined in RECS 2015, as well as commercial building types in CBECS 2012 that use consumer water heaters.

to use to conduct the LCC and PBP analysis for consumer water heaters.

Inputs to the LCC and PBP analysis are categorized as: (1) Inputs for establishing the purchase expense, otherwise known as the total installed cost, and (2) inputs for calculating the operating costs. Each type of input is discussed in the paragraphs that follow.

1. Total Installed Cost

The primary inputs for establishing the total installed cost are the baseline consumer price, standard-level customer price increases, and installation costs. Baseline consumer prices and standard-level consumer price increases will be determined by applying markups to manufacturer selling price estimates and sales tax. For gas-fired water heaters, DOE intends to take into account location where ultra-low-NO_X gas-fired water heaters would be required by the compliance date for any amended standards, such as the Bay Area Air Quality Management District (''AQMD'') (Regulation 9, Rule 6),[47] Sacramento Metropolitan AQMD (Rule 414),[48] San Joaquin Valley Air Pollution Control District (''APCD'') (Rule 4902),[49] Santa Barbara County APCD (Rule 352),[50] South Coast AQMD (Rule 1112),[51] Ventura County AQMD (Rule 74–11),[52] and Yolo-Solano AQMD (Rule 2.37).[53]

Issue H.2 DOE seeks input on locations requiring ultra-low-NO_X gas-fired water heaters.

The installation cost is added to the consumer price to arrive at a total installed cost. DOE intends to develop installation costs using the most recent RS Means data available.[54] DOE also intends to use regional labor costs to more accurately estimate installation costs by applying the appropriate regional labor cost from RS Means to each sampled household or building.

For water heaters in new homes, DOE plans to include basic installation cost, such as adding a gas line branch and/or electrical connection and water piping, in addition to putting the new water heater in place and additional set-up. For natural draft venting gas-fired water heaters in new construction, DOE plans to account for both commonly-vented water heaters (together with a central furnace) and isolated water heaters (separately vented). For replacement cases, DOE plans to include the installation cost associated with disconnecting and removing the old water heater, removal/disposal fees, permit fees, as well as the cost of putting the new water heater in place and additional set-up.

DOE also intends to account for additional labor costs associated with larger water heaters, replacing a larger drain pan, and potential space-constraint issues when the original water heater location is too small to accommodate the replacement water heater. DOE also intends to add any costs associated with updating or repairing existing flue venting including vent resizing and chimney relining. For efficiency levels that include electronic ignition, power vent, or condensing design, DOE intends to add the cost of installing an electrical outlet, a new venting system, and any additional cost for condensate disposal. For heat pump water heater installation, DOE intends to apply several additional costs, including one additional hour of labor for the extra time required to install this product, potential space-constraint issues, adding condensate withdrawal, and adding ductwork for supply and/or outlet air from the heat pump component (including adding louvered doors for water heaters installed in indoor closets).

Issue H.3 DOE seeks input on the approach and data sources it intends to use to develop installation costs, specifically, its intention to use the most recent RS Means Mechanical Cost Data.

Issue H.4 DOE seeks input on the fraction and categories of water heaters that encounter space-constraint issues (such as impact of height and width on installation space constraints or constraints in getting the consumer water heater through attic or closet doors).

Issue H.5 DOE seeks input on issues and costs associated with venting of flue gases of gas-fired storage and instantaneous water heaters, in particular regarding retrofit issues related to installing a new vent system for power vent and condensing water heaters, disconnecting the existing water heater from non-condensing furnace common venting system, and upgrading existing non-condensing venting (chimney relining or vent resizing). DOE also seeks input on how often and in what applications direct venting or sealed combustion are used or required.

Issue H.6 DOE seeks input on issues and costs associated with condensate disposal for condensing gas-fired storage and instantaneous water heaters, specifically how often and in what applications a condensate filter is installed or a condensate pump is installed.

Issue H.7 DOE seeks input on issues and costs associated with installing consumer water heaters in multi-family buildings and mobile homes.

Issue H.8 DOE seeks input on issues and costs associated with installing heat pump water heaters, including adjustment of electrical circuits, additional labor, space constraints, adding condensate withdrawal, and adding ductwork for supply and/or outlet air from the heat pump component.

Issue H.9 DOE seeks input on issues and costs associated with installing consumer water heaters with large input capacities, such as instantaneous natural gas water heaters, when replacing an existing smaller capacity natural gas storage water heater. DOE requests comment on how often a new larger gas pipe is required.

2. Operating Costs

The primary inputs for calculating the operating costs are energy consumption, product efficiency, energy prices, maintenance and repair costs, product lifetime, and discount rates. Both product lifetime and discount rates are used to calculate the present value of future operating costs.

The relevant energy consumption is the site energy use associated with

[47] Bay Area Air Quality Management District, Regulation 9: Inorganic Gaseous Pollutants; Rule 6: Nitrogen Oxides Emissions from Natural Gas-Fired Boilers and Water Heaters (Available at: *https://www.arb.ca.gov/drdb/ba/curhtml/r9-6.pdf*) (Last accessed Dec. 2, 2019).

[48] Sacramento Metropolitan Air Quality Management District, Rule 414: Water Heaters, Boilers and Process Heaters Rated Less Than 1,000,000 BTU PER HOUR Adopted 08–01–96 (Amended 03–25–10) (Available at: *http://www.airquality.org/ProgramCoordination/Documents/rule414.pdf*) (Last accessed Dec. 2, 2019).

[49] San Joaquin Valley Air Pollution Control District, Rule 4902: Residential Water Heaters (Adopted June 17, 1993; Amended March 19, 2009) (Available at: *http://valleyair.org/rules/currntrules/r4902.pdf*) (Last accessed Dec. 2, 2019).

[50] Santa Barbara County Air Pollution Control District, Rule 352: Natural Gas-Fired Fan-Type Central Furnaces and Small Water Heaters (Adopted 9/16/1999, revised 10/20/2011) (Available at: *https://www.ourair.org/wp-content/uploads/rule352.pdf*) (Last accessed Dec. 2, 2019).

[51] South Coast Air Quality Management District, Rule 1121: Control of Nitrogen Oxides from Residential Type, Natural Gas-Fired Water Heaters (Adopted Dec. 1, 1978; Amended Mar. 10, 1995; Amended Dec. 10, 1999; Amended Sept. 3, 2004) (Available at: *http://www.aqmd.gov/home/regulations/rules/support-documents/rule-1121*) (Last accessed Dec. 2, 2019).

[52] Ventura County Air Quality Management District, Rule 74–11: Natural Gas-Fired Water Heaters (Available at: *http://www.vcapcd.org/pubs/Advisories/7411/Ru7411Revision2010.pdf*) (Last accessed Dec. 2, 2019).

[53] Yolo-Solano Air Quality Management District, Rule 2.37: Natural Gas-Fired Water Heaters and Small Boilers (Adopted Nov. 9, 1994; Revised April 8, 2009) (Available at: *https://www.arb.ca.gov/DRDB/YS/CURHTML/R2-37.pdf*) (Last accessed Dec. 2, 2019).

[54] RS Means, 2020 Mechanical Cost Data (Available at: *https://www.rsmeans.com/products/books/cost-books.aspx*) (Last accessed Dec. 2, 2019).

providing water heating to the building. (The primary energy used to provide electricity for electric water heaters is accounted for in the NIA.) DOE intends to utilize the energy use calculation methodology described in section II.G of this document to determine water heater energy use.

DOE intends to determine recent gas, oil, and electricity prices based on geographically-available fuel cost data such as State level data, with consideration for the variation in energy costs paid by consumers living in different building types. DOE calculates energy expenses based on estimated marginal energy prices that customers are paying in different geographical areas of the country. DOE may consider data provided by EIA's Form EIA–861 [55] to calculate residential and commercial electricity prices, EIA's Natural Gas Navigator [56] to calculate residential and commercial natural gas prices, and EIA's State Energy Data Systems (''SEDS'') [57] to calculate liquefied petroleum gas (LPG) and fuel oil prices. Future energy prices will be projected using trends from the latest Annual Energy Outlook (''*AEO*'').[58]

Issue H.10 DOE seeks comment on its planned approach and sources for developing gas, oil, and electricity prices.

Maintenance costs are expenses associated with ensuring continued operation of the covered product over time. DOE intends to develop maintenance costs using the most recent RS Means data available [59] and manufacturer product literature. DOE intends to assess whether maintenance costs vary with product efficiency and product category. In addition, DOE plans to consider the cases when the product is covered by service and/or maintenance agreements. More specifically, DOE intends to account for the following: (1) Maintenance cost associated with storage water heaters being drained and flushed annually to minimize deposition of sediment, maintain operating efficiency, and prolong product life; (2) any maintenance cost associated with the flammable vapor ignition resistant (''FVIR'') component of gas-fired storage water heaters; (3) for a heat pump water heater, the cost of annual cleaning of the air filter and a preventive maintenance cost to check the evaporator and refrigeration system; (4) for gas-fired instantaneous water heaters, maintenance costs associated with the fouling of the heat exchanger from hard water, periodic sensor inspections, and filter changes; and (5) for oil-fired storage water heaters, the cost of annual maintenance contracts, which are available for this product category.

Issue H.11 DOE seeks input on the approach and data sources it intends to use to develop maintenance costs, specifically, its intention to use the most recent RS Means Facilities Maintenance & Repair Cost Data and to consider the cost of service and/or maintenance agreements.

Repair costs are expenses associated with repairing or replacing components of the covered product that have failed. DOE intends to develop maintenance costs using the most recent RS Means data available [60] and manufacturer literature. DOE intends to assess whether repair costs vary with product efficiency and product category. DOE intends to include repair cost for components that are more likely to fail during the consumer water heater's lifetime, such as pilot ignition, electronic ignition, and power vent fan for gas-fired water heaters; and electric resistance element, compressor, and the evaporator fan for electric water heaters. For oil-fired storage water heaters, DOE intends to calculate the cost of annual maintenance contracts, which typically include repair/replacement of failed components.

Issue H.12 DOE seeks comment as to whether water heater repair costs vary as a function of product efficiency. DOE also requests any data or information on developing repair costs.

Product lifetime is the age at which a unit is retired from service. DOE intends to conduct an analysis of water heater lifetimes using a combination of data on shipments, the consumer water heater stock, and RECS data on the age of existing water heaters in the sampled homes based on a methodology described in a journal article.[61] The data allow DOE to develop a Weibull probability distribution to characterize consumer water heater lifetime, which provides a range from minimum to maximum lifetime, as well as an average lifetime.[62]

Issue H.13 DOE seeks comment on its planned approach of using a Weibull probability distribution to characterize product lifetime. DOE also requests product lifetime data and information on whether product lifetime varies based on product characteristics, product application, or product efficiency.

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating costs. The discount rate used in the LCC analysis represents the rate from an individual consumer's perspective. DOE estimates a distribution of residential discount rates based on the opportunity cost of funds related to appliance energy cost savings and maintenance costs. DOE estimates commercial discount rates as the weighted average cost of capital (''WACC''), using the Capital Asset Pricing Model (''CAPM'').

To establish residential discount rates for the LCC analysis, DOE intends to use the Federal Reserve Board's Survey of Consumer Finances [63] (''SCF'') for 1995, 1998, 2001, 2004, 2007, 2010, 2013, and 2016 data, as well as other data sources,[64] to develop a distribution of

[55] EIA, Survey form EIA–861—Annual Electric Power Industry Report (Available at: *https://www.eia.gov/electricity/*) (Last accessed Dec. 2, 2019).

[56] EIA, Natural Gas Navigator (Available at: *http://www.eia.gov/dnav/ng/ng_pri_sum_dcu_nus_m.htm*) (Last accessed Dec. 2, 2019).

[57] EIA, SEDS (Available at: *http://www.eia.gov/state/seds/*) (Last accessed Dec. 2, 2019).

[58] EIA, AEO Full Version *(*Available at: *https://www.eia.gov/outlooks/aeo/*) (Last accessed Dec. 2, 2019).

[59] RS Means, 2020 Facilities Maintenance & Repair Cost Data (Available at: *https://www.rsmeans.com/products/books/cost-books.aspx*) (Last accessed Dec. 2, 2019).

[60] RS Means, 2020 Facilities Maintenance & Repair Cost Data (Available at: *https://www.rsmeans.com/products/books/cost-books.aspx*) (Last accessed Dec. 2, 2019).

[61] Lutz, J., A. Hopkins, V. Letschert, V. Franco, and A. Sturges, Using national survey data to estimate lifetimes of residential appliances, *HVAC&R Research,* 2011. 17(5): pp. 28 (Available at: *https://www.tandfonline.com/doi/abs/10.1080/10789669.2011.558166*) (Last accessed Dec. 2, 2019).

[62] If the data are available, DOE also plans to take into account differences in consumer water heater lifetime based on usage and application of the consumer water heater.

[63] The Federal Reserve Board, SCF (1995, 1998, 2001, 2004, 2007, 2010, 2013, and 2016) (Available at: *https://www.federalreserve.gov/econres/scfindex.htm*) (Last accessed Dec. 2, 2019).

[64] Damodaran, A., Data Page: Historical Returns on Stocks, Bonds and Bills-United States (Available at: *http://pages.stern.nyu.edu/~adamodar/*) (Last accessed Dec. 2, 2019); Moody's, Moody's Seasoned AAA Corporate Bond Yield [AAA], retrieved from FRED, Federal Reserve Bank of St. Louis (Available at: *https://fred.stlouisfed.org/series/AAA*) (Last accessed Dec. 2, 2019); Wells Fargo, Wells Fargo Cost of Savings Index (''COSI'') (Available at: *https://www.wellsfargo.com/mortgage/manage-account/cost-of-savings-index/*) (Last accessed Dec. 2, 2019); National Bureau of Economic Research, Marginal Income Tax Rates by Income Type (Available at: *http://users.nber.org/~taxsim/marginal-tax-rates/*) (Last accessed Dec. 2, 2019); U.S. Board of Governors of the Federal Reserve System, State and Local Bonds—Bond Buyer Go 20-Bond Municipal Bond Index (DISCONTINUED) [WSLB20], retrieved from FRED, Federal Reserve Bank of St. Louis (Available at: *https://fred.stlouisfed.org/series/WSLB20*) (Last accessed Dec. 2, 2019); U.S. Board of Governors of the Federal Reserve System, 30-Year Treasury Constant Maturity Rate [DGS30], retrieved from FRED, Federal Reserve Bank of St. Louis (Available at: *https://fred.stlouisfed.org/series/DGS30*) (Last accessed Dec. 2, 2019); Organisation for Economic

Continued

discount rates by income group to represent the rates that may apply in the year in which potential amended standards would take effect. For commercial discount rates, DOE intends to use Damodaran Online, which is a widely used source of information about company debt and equity financing for most types of firms, as the primary source of data.[65]

Issue H.14 DOE seeks comment on its planned discount rate methodology.

DOE measures LCC and PBP impacts of potential standard levels relative to a no-new-standards case that reflects the likely market in the absence of amended standards. DOE plans to develop market-share efficiency data (*i.e.,* the distribution of product shipments by efficiency) for the product classes DOE is considering, for the year in which compliance with any potential amended standards would be required. To estimate the market shares of different water heater energy efficiency levels in the no-new-standards case, DOE intends to use historical data provided by AHRI for the April 2010 Final Rule,[66] along with more recent data that may be provided by stakeholders. DOE also intends to use 2010–2018 ENERGY STAR shipments data.[67] Because these data may not cover all of the energy efficiency levels under consideration, DOE also intends to use data on the number of water heater models at different energy efficiency levels, as reported in DOE's compliance certification database,[68] the AHRI directory of certified product performance,[69] the California Energy Commission (''CEC'') appliance efficiency database,[70] and the ENERGY STAR certified water heaters directory.[71]

Issue H.15 DOE requests shipments data for consumer water heaters, broken down by product class, that show current market shares by efficiency level. DOE also seeks input on similar historic data.

A table of the types of data requested for shipments in Issue H.15 can be found in Table II.7 and Table II.8. Table II.7 represents efficiency data from 2007–2015 based on EF metric based on the test procedure that was effective prior to December 31, 2015, while Table II.8 represents efficiency data from 2016–2018 based on the amended test procedure using the UEF metric. Interested parties are also encouraged to provide additional shipment data as may be relevant.

TABLE II.7—SUMMARY TABLE OF SHIPMENTS-RELATED DATA REQUESTS FROM 2007 TO 2015 BY EF BINS USING TEST PROCEDURE PRIOR TO DECEMBER 31, 2015 BY PRODUCT CLASS AND REPRESENTATIVE RATED VOLUMES *

EF bins	Historical shipments (millions)								
	2007	2008	2009	2010	2011	2012	2013	2014	2015
Gas-Fired Storage Water Heaters, 40 gal									
0.59–0.60									
0.61–0.63									
0.64–0.69									
0.70 and above									
Oil-Fired Storage Water Heaters, 32 gal									
0.53–0.61									
0.62–0.65									
0.66–0.67									
0.68 and above									
Electric Storage Water Heaters, 50 gal									
0.90									
0.91–0.93									
0.94–0.96									
0.97–2.49									
2.50–2.99									
3.00 and above									
Electric Storage Water Heaters, 80 gal									
0.86–0.96									
0.97–2.49									
2.50–2.99									

Co-operation and Development (''OECD''), Short-term interest rates (indicator) (Available at *https://data.oecd.org/interest/short-term-interest-rates.htm*) (Last accessed Dec. 2, 2019); U.S. Department of Labor–Bureau of Labor Statistics, Bureau of Labor Statistics Data, Consumer Price Index (2018) (Available at: *http://data.bls.gov*) (Last accessed Dec. 2, 2019).

[65] Damodaran A., Data Page: Costs of Capital by Industry Sector (Available at: *http://pages.stern.nyu.edu/~adamodar/*) (Last accessed Dec. 2, 2019).

[66] AHRI provided to DOE 2002–2006 shipments data by energy factor (EF) bins for gas-fired storage water heaters (40 gallons) and oil-fired storage water heaters (50 gallon). In addition, AHRI provided LBNL 2004–2007 shipments data by energy factor (EF) bins for gas-fired instantaneous water heaters.

[67] ENERGY STAR, 2010–2018 Unit Shipment Data (Available at: *https://www.energystar.gov/index.cfm?c=partners.unit_shipment_data*) (Last accessed Dec. 2, 2019).

[68] DOE, Compliance Certification Database (Available at: *https://www.regulations.doe.gov/certification-data/CCMS-4-Water_Heaters.html#q=Product_Group_s%3A%22Water%20Heaters%22*) (Last accessed Dec. 2, 2019).

[69] AHRI, Directory of Certified Product Performance for Residential Water Heaters (Available at: *https://www.ahridirectory.org/NewSearch?programId=24&searchTypeId=3*) (Last accessed Dec. 2, 2019).

[70] CEC, Appliance Efficiency Database (Available at: *https://cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx*) (Last accessed Dec. 2, 2019).

[71] ENERGY STAR, ENERGY STAR Certified Water Heaters Directory (Available at: *https://www.energystar.gov/productfinder/product/certified-water-heaters/results*) (Last accessed Dec. 2, 2019).

TABLE II.7—SUMMARY TABLE OF SHIPMENTS-RELATED DATA REQUESTS FROM 2007 TO 2015 BY EF BINS USING TEST PROCEDURE PRIOR TO DECEMBER 31, 2015 BY PRODUCT CLASS AND REPRESENTATIVE RATED VOLUMES *—Continued

EF bins	Historical shipments (millions)								
	2007	2008	2009	2010	2011	2012	2013	2014	2015
3.00 and above									
Gas-Fired Instantaneous Water Heaters, All									
0.62–0.77									
0.78–0.80									
0.81–0.82									
0.83–0.86									
0.87–0.92									
0.93–0.94									
0.95 and above									
Grid-Enabled Water Heaters, 80 gal									
0.86–0.91									
0.92									
0.93–0.95									
0.96 and above									

* Any additional shipments by efficiency bins data for additional rated volumes, such as 50 or 30 gallons for gas-fired storage water heaters, 50 gallon oil-fired storage water heaters, 30, 40, or 67 gallons for electric storage water heaters, or 100 gallon for grid-enabled water heaters are welcome. In addition, any data for any other product classes are also welcome.

TABLE II.8—SUMMARY TABLE OF SHIPMENTS-RELATED DATA REQUESTS FROM 2016–2018 BY UNIFORM ENERGY FACTOR (UEF) BINS USING TEST PROCEDURE AFTER DECEMBER 31, 2015 BY PRODUCT CLASS AND REPRESENTATIVE CAPACITY *

UEF bins	Historical shipments (millions)		
	2016	2017	2018
Gas-Fired Storage Water Heaters, 38 gal, Medium Draw Pattern			
0.58			
0.59–0.60			
0.61–0.63			
0.64–0.66			
0.67–0.69			
0.70 and above			
Oil-Fired Storage Water Heaters, 30 gal, High Draw Pattern			
0.62–0.65			
0.66–0.67			
0.68 and above			
Electric Storage Water Heaters, 46 gal, Medium Draw Pattern			
0.92			
0.93–0.96			
0.97–2.49			
2.50–2.99			
3.00 and above			
Electric Storage Water Heaters, 80 gal, High Draw Pattern			
2.00–2.49			
2.50–3.00			
3.00 and above			
Gas-Fired Instantaneous Water Heaters, All			
0.81			
0.82–0.86			
0.87–0.92			
0.93–0.94			
0.95 and above			

TABLE II.8—SUMMARY TABLE OF SHIPMENTS-RELATED DATA REQUESTS FROM 2016–2018 BY UNIFORM ENERGY FACTOR (UEF) BINS USING TEST PROCEDURE AFTER DECEMBER 31, 2015 BY PRODUCT CLASS AND REPRESENTATIVE CAPACITY *—Continued

UEF bins	Historical shipments (millions)		
	2016	2017	2018
Grid-Enabled Water Heaters, 80 gal, High Draw Pattern			
0.90–0.91			
0.92			
0.93–0.95			
0.96 and above			

* Any additional shipments by efficiency bins data for additional rated volumes, such as 48 gallon (high draw) for gas-fired storage water heaters, 48 gallon (high draw) oil-fired storage water heaters, 27 gallon (low draw), 36 (medium draw), or 67 gallons (high draw) for electric storage water heaters, 100 gallon (high draw) for grid-enabled water heaters are welcome. In addition, any data for any other product classes are also welcome.

Issue H.16 DOE also requests information on expected future trends in efficiency for consumer water heaters product classes, including the relative market shares of condensing versus non-condensing products in the market for storage water heaters and instantaneous water heaters, as well as the share of heat pump water heaters in the absence of amended efficiency standards.

DOE intends to consider the possibility for potential amended standards to impact the choice between categories of water heating products or product switching (including the potential for fuel switching), both for new construction and the replacement of existing products. Because home builders are sensitive to the cost of water heating products, standards that significantly increase the purchase price of one category of product relative to other options may induce some builders to switch to a different water heating product than they would have otherwise installed (*i.e.,* in the no-new-standards case). Such an amended standard level may also induce some home owners to replace their existing water heater at the end of its useful life with a different category of water heating product, or to repair the product instead of replacing, thereby delaying the replacement of the consumer water heater.

DOE plans to develop a consumer choice model to estimate the response of builders and homeowners to potential amended consumer water heater standards. DOE plans to consider three options available to each sample household: (1) Replace with the same category of consumer water heater that meets a particular standard level, (2) replace with a consumer water heater using a different fuel or a different product category (*e.g.,* switching from a storage gas-fired unit to an instantaneous gas-fired unit; storage gas-fired unit to storage electric unit, storage electric unit to a storage gas-fired unit), or (3) repair the existing product, thereby delaying replacement. DOE plans to have the consumer choice model use the installed cost of each option, as estimated for each sample household or building, and the operating costs, taking into account the water heating load for each household and the energy prices it will pay over the lifetime of the available product options. DOE intends to account for any additional costs to accommodate a new product or repair it. To determine which consumer choice option each sampled household or building is likely to select, DOE intends to use the estimated total installed cost and operating cost of each of the modeled choices together with decision criteria that take into account consumer willingness to pay for more-expensive but more-efficient products, as well as other factors such as income and purchase incentives.

Issue H.17 DOE seeks any data and comment on its planned consumer choice methodology approach.

Issue H.18 DOE seeks any data or comments on the consumer choice model in new construction, specifically identifying what the principal factors are driving the selection of different water heater categories in new construction. For example, how often are gas water heaters installed if a gas furnace is selected as the heating system in new construction?

I. Shipments Analysis

DOE uses shipment forecasts to calculate the national impacts of potential amended energy conservation standards on energy consumption, net present value (''NPV'') of consumer benefits, and future manufacturer cash flows. DOE shipments projections are based on available historical data broken out by product class, capacity, and efficiency. Current sales estimates allow for a more accurate model that captures recent trends in the market. In the present case, DOE intends to develop a shipments model for consumer water heaters based on available historical shipments data. DOE currently has historical shipments data by product class listed in Table II.9, from data sources as listed in Table II.10. In addition, DOE has limited historical data to disaggregate water heaters by capacity. Unless more recent data become available, DOE intends to use AHRI and U.S. Census shipments data to disaggregate gas-fired storage water heaters and electric storage water heaters above 55 gallons.[72]

[72] AHRI, Statistical Release: 1988–1995 data from the Gas Appliance Manufacturers Association (''GAMA'') (1999); U.S. Department of Commerce-Bureau of the Census, Current Industrial Reports for Major Household Appliances (MA335F), 2003–2010 (Available at: *https://www.census.gov/data/tables/time-series/econ/cir/ma335f.html*) (Last accessed Dec. 2, 2019).

TABLE II.9—HISTORICAL SHIPMENTS BY PRODUCT CLASS

Product class	Historical shipments (millions)									
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Gas-fired Storage Water Heaters*	3.761	3.918	3.953	3.959	4.282	4.472	4.374	4.209	4.359	4.521
Electric Storage Water Heaters*	3.752	3.737	3.739	3.734	4.008	4.277	4.027	3.938	4.127	4.230
Oil-fired Storage Water Heaters	No Data.									
Tabletop Water Heaters	No Data.									
Instantaneous Gas-fired Water Heaters**	No Data	0.384	0.337	0.339	0.397	0.416	0.297	0.304	0.387	No Data.
Instantaneous Electric Water Heaters	No Data.									
Grid-Enabled Water Heaters	No Data.									

* AHRI data for all storage water heaters that are marketed by the manufacturer for residential use. These data are aggregated and include grid-enabled and tabletop water heaters.

** Data from 2010 to 2017 are ENERGY STAR unit shipment data for whole home instantaneous water heaters meeting the ENERGY STAR criteria, which may not reflect the entire market. If no other data source is available, DOE intends to adjust these values so that they are more representative of the entire market.

TABLE II.10—HISTORICAL SHIPMENTS DATA SOURCES AVAILABLE BY PRODUCT CLASSES

Product class	Shipments data source
Gas-fired Storage Water Heaters	1954 to 2018 based on AHRI data[73] and Appliance Magazine report.[74]
Electric Storage Water Heaters.	
Oil-fired Storage Water Heaters	1997 to 2007 data from Oil Heating Magazine.[75]
Tabletop Water Heaters	No data.
Instantaneous Gas-fired Water Heaters	2004 to 2007 shipments data provided by AHRI.[76]
	2010 to 2017 shipments data from ENERGY STAR.[77]
Instantaneous Electric Water Heaters	No Data.
Grid-Enabled Water Heaters	No Data.

Issue I.1 DOE seeks up-to-date historical shipments data for consumer water heaters by product class, particularly for product classes other than gas-fired and electric storage water heaters.

The shipments model will consider three market segments: (1) New residential households or commercial buildings acquiring water heaters; (2) existing households or buildings replacing old water heaters; and (3) existing households or buildings acquiring new water heaters for the first time.[78]

DOE intends to utilize U.S. Census Bureau data to establish historical housing starts for residential households,[79] [80] as well as National Energy Modeling System (''NEMS'') data published in the latest *AEO* to establish historical new construction floor space for commercial buildings. DOE intends to use the latest *AEO* to project housing starts for residential households and new construction floor space for commercial buildings. Using these sources, as well as historical product saturation data from RECS and CBECS, DOE will estimate shipments to these market segments.

Issue I.2 DOE seeks input on the approach and data sources it intends to use in developing the shipments model and shipments projections for this analysis.

To estimate the impact on consumer water heater shipments from product switching and repair versus replacement decisions[81] that may be incentivized by potential standards, DOE plans to use the consumer choice model described in section II.G of this RFI. The options DOE plans to consider are: (1) Replace with the same category of consumer water heater that meets a particular standard level, (2) replace with a consumer water heater using a different fuel or a different category product (*e.g.,* switching from a storage gas-fired unit to an instantaneous gas-fired unit; storage gas-fired unit to a storage electric unit, storage electric unit to a storage gas-fired unit), or (3) repair the existing product, thereby delaying the replacement. To determine whether a consumer would choose to switch products or repair rather than replacing their water heater, the shipments model will account for the combined effects of changes in purchase price and annual operating cost. Changes to the purchase price and operating costs due to amended energy conservation standards are the drivers for shipment estimates for the standards cases relative to the no-new-standards case.

Issue I.3 DOE seeks any data sources and input on the approach for determining potential impacts on

[73] AHRI, Residential Automatic Storage Water Heaters Historical Data: 1996–2018 (Available at: *http://www.ahrinet.org/statistics.aspx*) (Last accessed Dec. 2, 2019).

[74] Appliance Magazine, Appliance Historical Statistical Review: 1954–2012 (2014).

[75] Oil Heating Magazine, Multiple Years (1997–2007).

[76] Data submitted as part of the April 2010 Final Rule.

[77] ENERGY STAR, 2010–2017 Unit Shipment Data (Available at: *https://www.energystar.gov/index.cfm?c=partners.unit_shipment_data*) (Last accessed Dec. 2, 2019).

[78] New owners primarily consist of households or buildings that during a major remodel add a consumer water heater, or households or buildings that switch from a non-consumer water heater (such as a boiler). For this analysis, new owners also include households or buildings that switch between different consumer water heater product classes.

[79] U.S. Census Bureau, New Privately Owned Housing Units Started: Annual Data 1959–2018 (Available at: *http://www.census.gov/construction/nrc/historical_data/*) (Last accessed Dec. 2, 2019).

[80] U.S. Census Bureau, Placements of New Manufactured Homes by Region and Size of Home: 1980–2018 (Available at: *https://www.census.gov/programs-surveys/mhs.html*) (Last accessed Dec. 2, 2019).

[81] Consumers can choose to extend the useful life of their existing broken consumer water heater through additional repairs instead of replacing it.

product shipments related to consumers' decision on product switching and repair versus replacement.

J. National Impact Analysis

The purpose of the NIA is to estimate aggregate impacts of potential energy conservation standards at the national level. DOE's analysis includes the national energy savings (''NES'') from potential standards and the NPV of the total consumer costs and savings.

To develop the NES, DOE calculates and examines the difference between the annual energy consumption for the no-new-standards case and the standards cases. DOE calculates the annual energy consumption using per-unit annual energy use data multiplied by projected shipments.

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount rate to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

The NIA requires a projection of product energy efficiencies for the no-new-standards case and for each of the standards cases. For the no-new-standards case trend, DOE will consider whether historical data show any trend and whether any trend can be reasonably extrapolated beyond current efficiency levels.

Issue J.1 DOE requests comment on the anticipated future market share of higher-efficiency products, such as condensing gas-fired water heaters and heat pump water heaters, as compared to less-efficient products, such as non-condensing gas-fired water heaters and electric water heaters, respectively, for each product class.

For the various standards cases, to estimate the impact that amended energy conservation standards may have in the year compliance becomes required, DOE may use a ''roll-up'' scenario in which product efficiencies in the no-new-standards case that do not meet the new or amended standard level under consideration would ''roll up'' to meet that standard level, and shipments at efficiencies above the standard level under consideration would not be affected. After DOE establishes the efficiency distribution for the assumed compliance date of a standard, it may consider future projected efficiency growth using available trend data.

Issue J.2 DOE requests comment on use of a ''roll-up'' scenario for the standards cases.

When calculating energy consumption for water heaters at each considered efficiency level above the baseline, DOE plans to consider applying a rebound effect. A rebound effect occurs when a more-efficient product is used more intensively than its less-efficient predecessor, such that the expected energy savings from the efficiency improvement may not fully materialize. Accordingly, when a rebound effect is incorporated, calculated energy savings are lower than if no rebound effect were considered. For example, in the April 2010 Final Rule, DOE applied a rebound effect of 10 percent.

Issue J.3 DOE seeks information regarding whether there is a rebound effect associated with more-efficient consumer water heaters, as would be expected to impact a potential amended energy conservation standard for those products, and if so, what that effect would be. If data indicate that there is such an effect, DOE will account for the rebound effect in its calculation of NES.

K. Manufacturer Impact Analysis

The purpose of the manufacturer impact analysis (''MIA'') is to estimate the impact of amended energy conservation standards on manufacturers of consumer water heaters. The MIA includes both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (''GRIM''), an industry cash-flow model adapted for each product in this analysis, with the key output of industry net present value (''INPV'') to assess the financial impacts of a standard. The qualitative part of the MIA addresses the potential impacts of energy conservation standards on manufacturing capacity and manufacturing employment as well as factors such as product characteristics, impacts on particular subgroups of firms, and important market and product trends.

As part of the MIA, DOE intends to analyze impacts of amended energy conservation standards on subgroups of manufacturers of covered products, including small business manufacturers. DOE uses the Small Business Administration's (''SBA'') small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the North American Industry Classification System (''NAICS'').[82] Manufacturing of consumer water heaters is classified under NAICS 335220, ''Major Household Appliance Manufacturing,'' and the SBA sets a threshold of 1,500 employees or less for a domestic entity to be considered as a small business. This employee threshold includes all employees in a business's parent company and any other subsidiaries.

One aspect of assessing manufacturer burden involves examining the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

Issue K.1 To the extent feasible, DOE seeks company names and contact information for domestic or foreign-based manufacturers that distribute consumer water heaters in commerce in the United States.

Issue K.2 DOE identified small businesses as a subgroup of manufacturers that could be disproportionally impacted by amended energy conservation standards. DOE requests the names and contact information of small business manufacturers (as defined by the SBA's size threshold) of consumer water heaters that distribute products in commerce in the United States. In addition, DOE requests comment on any other manufacturer subgroups that could be disproportionally impacted by amended energy conservation standards. DOE requests feedback on any potential approaches that could be considered to address impacts on manufacturers, including small businesses.

[82] Available at: *https://www.sba.gov/document/support--table-size-standards.*

Issue K.3 DOE requests information regarding the cumulative regulatory burden impacts on manufacturers of consumer water heaters associated with: (1) Other DOE standards applying to different products that these manufacturers may also make and (2) product-specific regulatory actions of other Federal agencies. DOE also requests comment on its methodology for computing cumulative regulatory burden and whether there are any flexibilities it can consider that would reduce this burden while remaining consistent with the requirements of EPCA.

L. Other Energy Conservation Standards Topics

1. Market Failures

In the field of economics, a market failure is a situation in which the market outcome does not maximize societal welfare. Such an outcome would result in unrealized potential welfare. DOE welcomes comment on any aspect of market failures, especially those in the context of amended energy conservation standards for consumer water heaters.

2. Other

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of energy conservation standards for consumer water heaters not already addressed by the specific areas identified in this document.

III. Submission of Comments

DOE invites all interested parties to submit in writing by July 6, 2020, comments and information on matters addressed in this notice and on other matters relevant to DOE's consideration of amended energy conservations standards for consumer water heaters. After the close of the comment period, DOE will review the public comments received and may begin collecting data and conducting the analyses discussed in this RFI.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Following such instructions, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No telefacsimilies (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email to *ConsumerWaterHeaters2017STD0019@ee.doe.gov* or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on February 25, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on May 13, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

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DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2020–BT–STD–0007]

RIN 1904–AE63

Energy Conservation Program: Energy Conservation Standards for Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (''DOE'') is initiating an effort to determine whether to amend the current energy conservation standards for electric motors. DOE must review these standards at least once every six years and either propose new standards for electric motors or a notice of determination that the existing standards do not need amending. DOE is soliciting information from the public to help determine whether amending the current electric motor standards would produce significant energy savings while being technologically feasible and cost effective. Accordingly, DOE seeks information regarding any technological or market changes since the most recent standards update that would justify a new rulemaking to increase the stringency of the current standards consistent with these factors. DOE welcomes written comments from the public on any subject within the scope of this document (including those topics not specifically raised), as well as the submission of data and other relevant information.

DATES: Written comments and information will be accepted on or before June 22, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–STD–0007, by any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: ElecMotors2020STD0007@ee.doe.gov* Include the docket number EERE–2020–BT–STD–0007 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section III of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at *http://www.regulations.gov/#!docketDetail;D=EERE-2020-BT-STD-0007.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. *See* section III for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

For further information on how to submit a comment or review other public comments and the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

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I. Introduction

A. Authority and Background

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] among other things, authorizes DOE to regulate the energy efficiency of a number of consumer products and certain

[1] All references to EPCA in this document refer to the statute as amended through America's Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C [2] of EPCA, added by Public Law 95–619, Title IV, section 441(a) (42 U.S.C. 6311–6317, as codified), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve the energy efficiency of certain types of industrial equipment, including electric motors, the subject of this RFI. (42 U.S.C. 6311(1)(A)) The Energy Policy Act of 1992 (''EPACT 1992'') (Pub. L. 102–486 (October 24, 1992)) further amended EPCA by establishing energy conservation standards and test procedures for certain commercial and industrial electric motors that are manufactured alone or as a component of another piece of equipment. In December 2007, Congress enacted the Energy Independence and Security Act of 2007 (''EISA 2007'') (Pub. L. 110–140). Section 313(b)(1) of EISA 2007 updated the energy conservation standards for those electric motors already covered by EPCA and established energy conservation standards for a larger scope of motors not previously covered by standards. (42 U.S.C. 6313(b)(2)) EISA 2007 also revised certain statutory definitions related to electric motors. *See* EISA 2007, sec. 313 (amending statutory definitions related to electric motors at 42 U.S.C. 6311(13))

The energy conservation program under EPCA consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (*See* 42 U.S.C. 6316(a) *and* 42 U.S.C. 6297(d))

On October 5, 1999, DOE published a final rule to codify the EPACT 1992 electric motor requirements. 64 FR 54114. After EISA 2007's enactment, DOE updated, among other things, the corresponding electric motor regulations at 10 CFR part 431 by incorporating the new definitions and energy conservation standards that the law established. *See* 74 FR 12058 (March 23, 2009) (codifying various amendments enacted by Congress through EISA, including the adoption of specific energy conservation standards for certain classes of electric motors). DOE subsequently proposed new test procedures for small electric motors,[3] see 73 FR 78220 (December 22, 2008), and later finalized key provisions related to small electric motor testing. *See* 74 FR 32059 (July 7, 2009). Further updates to the test procedures for electric motors and small electric motors followed when DOE issued a rule that primarily focused on updating various definitions and incorporations by reference related to the current test procedure. *See* 77 FR 26608 (May 4, 2012). That rule defined the term ''electric motor'' to account for EISA 2007's removal of the previous statutory definition of ''electric motor.'' DOE also clarified definitions related to those motors that EISA 2007 laid out as part of EPCA's statutory framework, including motor types that DOE had not previously regulated. *See generally,* 77 FR 26608, 26613–26619. DOE also published a new test procedure on December 13, 2013, that further refined various electric motor definitions and added certain definitions and test procedure preparatory steps to address a wider variety of electric motor types than are regulated, including those electric motors that are largely considered to be special-or definite-purpose motors. 78 FR 75962. On May 29, 2014, DOE published a final rule adopting new and amended energy conservation standards for electric motors that applied the standards to a wider scope of electric motors, required regulated motors, with the exception of fire pump electric motors, to satisfy the efficiency levels (''ELs'') prescribed in Table 12–12 of National Electrical Manufacturers Association (''NEMA'') Standards Publication MG 1–2011, ''Motors and Generators,'' and retained the standards for fire pump motors. 79 FR 30934 (May 2014 Final Rule'').

DOE must also periodically evaluate the energy conservation standards for each type of covered equipment, including those at issue here, after the issuance of any final rule establishing or amending a standard. *See* 42 U.S.C. 6316(a) *and* 42 U.S.C. 6295(m)(1). In doing so, DOE must issue (and have published) either a notice of determination that the standards do not need to be amended or a proposal that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)) In making a determination that the standards do not need to be amended, DOE must evaluate whether amended standards (1) will result in significant conservation of energy, (2) are technologically feasible, and (3) are cost effective as described under 42 U.S.C. 6295(o)(2)(B)(i)(II). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(A); 42 U.S.C. 6295(n)(2)) Under 42 U.S.C. 6295(o)(2)(B)(i)(II), DOE must determine whether the benefits of a standard exceed its burdens by, to the greatest extent practicable, considering the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard. If DOE decides not to amend a standard based on the statutory criteria, not later than 3 years after that determination DOE must issue (and submit for publication) either a determination that the standards do not need to be amended or propose amended energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(2))

In proposing new standards, DOE must evaluate that proposal against the criteria of 42 U.S.C. 6295(o), as described in the following section, and follow the rulemaking procedures set out in 42 U.S.C. 6295(p). (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(1)(B) If DOE decides to amend the standard based on the statutory criteria, DOE must publish a final rule not later than two years after energy conservation standards are proposed. (42 U.S.C. 6316(a); 42 U.S.C. 6295(m)(3)(A))

DOE is publishing this RFI to collect data and information to inform its decision consistent with its obligations under EPCA.

B. Rulemaking Process

DOE must follow specific statutory criteria when prescribing new or amended standards for covered equipment. EPCA generally requires that any new or amended energy conservation standard prescribed by the

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[3] ''Small electric motors'' are addressed separately from ''electric motors'' in 10 CFR part 431 subpart X.

Secretary be designed to achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(A)) To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the affected products;

(2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial cost, or maintenance expenses;

(3) The total projected amount of energy and water (if applicable) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant. (42 U.S.C. 6316(a); 42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings	• Shipments Analysis • National Impact Analysis • Energy and Water Use Determination
Technological Feasibility	• Market and Technology Assessment • Screening Analysis • Engineering Analysis
Economic Justification:	
1. Economic impact on manufacturers and consumers	• Manufacturer Impact Analysis • Life-Cycle Cost and Payback Period Analysis • Life-Cycle Cost Subgroup Analysis
2. Lifetime operating cost savings compared to increased cost for the product	• Shipments Analysis • Markups for Product Price Determination • Energy and Water Use Determination • Life-Cycle Cost and Payback Period Analysis
3. Total projected energy savings	• Shipments Analysis • National Impact Analysis
4. Impact on utility or performance	• Screening Analysis • Engineering Analysis
5. Impact of any lessening of competition	• Manufacturer Impact Analysis
6. Need for national energy and water conservation	• Shipments Analysis • National Impact Analysis
7. Other factors the Secretary considers relevant	• Employment Impact Analysis • Utility Impact Analysis • Emissions Analysis • Monetization of Emission Reductions Benefits • Regulatory Impact Analysis

As detailed throughout this RFI, DOE is publishing this document seeking input and data from interested parties to aid in the development of the technical analyses on which DOE will ultimately rely to determine whether (and if so, how) to amend the standards for electric motors.

II. Request for Information and Comments

In the following sections, DOE has identified a variety of issues on which it seeks input to aid in the development of the technical and economic analyses regarding whether amended standards for electric motors may be warranted.

As an initial matter, DOE seeks comment on whether there have been sufficient technological or market changes since the most recent standards update that may justify a new rulemaking to consider more stringent standards. Specifically, DOE seeks data and information to enable the agency to determine whether DOE should propose a ''no new standard'' determination because a more stringent standard: (1) Would not result in a significant savings of energy; (2) is not technologically feasible; (3) is not economically justified; or (4) any combination of foregoing.

A. Equipment Covered by This Process

This RFI covers equipment meeting the electric motor definition codified at 10 CFR 431.12 [4] and includes the different classes of electric motors that DOE currently regulates. DOE's definitions related to electric motors were most recently amended in May 2014. *See* 79 FR 30933 (May 29, 2014).

The term ''electric motor'' is broadly defined as ''a machine that converts electrical power into rotational mechanical power.'' 10 CFR 431.12. Currently, DOE regulates electric motors falling into the NEMA Design A, NEMA Design B, NEMA Design C, and fire pump motor categories and those electric motors that meet the criteria specified at 10 CFR 431.25(g). 10 CFR 431.25(h)–(j). Section 431.25(g) specifies that the relevant standards apply only to electric motors, including partial electric motors, that satisfy the following criteria:

(1) Are single-speed, induction motors;

[4] This RFI does not address small electric motors, which are covered separately under 10 CFR part 431, subpart X. A small electric motor is ''a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987, including IEC metric equivalent motors.'' 10 CFR 431.442.

(2) Are rated for continuous duty (MG 1) operation or for duty type S1 (IEC)

(3) Contain a squirrel-cage (MG 1) or cage (IEC) rotor;

(4) Operate on polyphase alternating current 60-hertz sinusoidal line power;

(5) Are rated 600 volts or less;

(6) Have a 2-, 4-, 6-, or 8-pole configuration;

(7) Are built in a three-digit or four-digit NEMA frame size (or IEC metric equivalent), including those designs between two consecutive NEMA frame sizes (or IEC metric equivalent), or an enclosed 56 NEMA frame size (or IEC metric equivalent);

(8) Produce at least one horsepower (0.746 kW) but not greater than 500 horsepower (373 kW), and

(9) Meet all of the performance requirements of one of the following motor types: A NEMA Design A, B, or C motor or an IEC Design N or H motor.

10 CFR 431.25(g).

NEMA Design A, B and C motors are all squirrel-cage motors. NEMA Design A and B motors are very similar, except one of the main differences between them is that NEMA Design A motors have no locked-rotor current limits whereas NEMA Design B motors are required to stay below certain maximum locked-rotor current limits specified in NEMA MG 1–2009. Otherwise, NEMA Design A and NEMA Design B motors have similar requirements for locked-rotor, pull-up, and breakdown torque and are consequently used in many of the same applications. IEC Design N motors have similar locked-rotor, pull-up, and breakdown torque requirements except that these requirements are specified in IEC 60034–12 edition 2.1 rather than in NEMA MG 1–2009.

NEMA Design C motors, on the other hand, have higher torque requirements than NEMA Design A or B motors. The difference in torque requirements restrict which applications can use which NEMA design types. As a result, NEMA Design C motors will not always be replaceable with NEMA Design A or B motors, or vice versa. IEC Design H motors have similar torque requirements except these are specified in IEC 60034–12 edition 2.1.

Fire pump electric motors are motors with special design characteristics that make them more suitable for emergency operation. Such electric motors, per the requirements of National Fire Protection (''NFPA'') standard NFPA 20, are required to be marked as complying with NEMA Design B performance standards and be capable of operating even if it overheats or may be damaged due to continued operation.

The definitions for NEMA Design A motors, NEMA Design B motors, NEMA Design C motors, fire pump electric motors, IEC Design N motor and IEC Design H motor are codified in 10 CFR 431.12.

DOE has also exempted certain categories of motors from being regulated by its standards because of the current absence of a reliable and repeatable method to accurately measure their efficiency. *See* 79 FR 30934, 30945; *see also,* 78 FR 75962, 75974, 75987–75989). The current exemptions are as follows:

- Air-over electric motors;
- Component sets of an electric motor;
- Liquid-cooled electric motors;
- Submersible electric motors; and
- Inverter-only electric motors.

10 CFR 431.25(l)

In a recent test procedure notice of proposed rulemaking for small electric motors and electric motors, DOE did not propose to change the scope of the test procedure for electric motors. (84 FR 17004 (April 23, 2019)) DOE also requested comment in a test procedure RFI for electric motors published on November 2, 2017 (82 FR 50844) regarding the merits of revising the NEMA Design A, B, and C motor definitions, among others, and updating the current regulation's NEMA MG 1 references to the most recent edition of the standard, NEMA MG 1–2016. DOE notes that comments received on issues related to the scope and definitions for electric motors discussed in the April 2019 proposed test procedure rulemaking for small electric motors and electric motors will be addressed as part of that rulemaking.

In 2016, an updated version of the IEC 60034–12 was published that added new starting requirements to describe six new IEC motor designs in addition to the previously considered IEC Design N and H motors that DOE currently regulates: IEC Design NE, IEC Design HE, IEC Design NY, IEC Design NEY, IEC Design HY, and IEC Design HEY. All six additional categories are described as motors that are very similar in designs compared to the IEC Design N and H motors that DOE currently regulates, with the only differences being the locked rotor apparent power (indicated by the letter ''E''), and starting configuration (star-delta starter indicated by the letter ''Y''). DOE intends to review these additional IEC motor designs to determine whether these IEC designs are equivalent to the NEMA Design A, B, or C motors that DOE currently regulates.

Issue A.1 DOE requests comment on whether additional equipment definitions are necessary to clarify any potential definitional ambiguities between existing equipment class groups. DOE also seeks input on whether such equipment currently exist in the market or whether they are being planned for introduction. DOE also requests comment on opportunities to combine equipment class groups that could reduce regulatory burden.

Issue A.2 DOE requests input and comment on whether IEC Design NE, NEY, NY, HE, HEY, and HY motors are equivalent designs to NEMA Design A, B, or C motors, and if so, information and data to support such a consideration.

B. Market and Technology Assessment

The market and technology assessment that DOE routinely conducts when analyzing the impacts of a potential new or amended energy conservation standard provides information about the electric motors industry that will be used in DOE's analysis throughout the rulemaking process. DOE uses qualitative and quantitative information to characterize the structure of the industry and market. DOE identifies manufacturers, estimates market shares and trends, addresses regulatory and non-regulatory initiatives intended to improve energy efficiency or reduce energy consumption, and explores the potential for efficiency improvements in the design and manufacturing of electric motors. DOE also reviews equipment literature, industry publications, and company websites. Additionally, DOE conducts interviews with manufacturers to improve its assessment of the market and available technologies for electric motors.

1. Equipment Class Groups and Equipment Classes

When evaluating and establishing energy conservation standards, DOE may divide covered equipment into equipment classes by the type of energy used, or by capacity or other performance-related features that justify a different standard. (42 U.S.C. 6316(a); 42 U.S.C. 6295(q)) In determining whether capacity or another performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE deems appropriate. (*Id.*)

For electric motors, due to the large number of characteristics involved in electric motor design, DOE developed both ''equipment class groups'' and ''equipment classes''. With respect to class groups, the current energy conservation standards specified in 10 CFR 431.25 are based on three broad equipment groupings determined according to performance-related features that provide utility to the

consumer and are described in terms of motor design (*i.e.* NEMA Design A and B, NEMA Design C, and Fire Pump Motors). Table II.1 lists the current three equipment class groups for electric motors.

TABLE II.1—CURRENT ELECTRIC MOTORS EQUIPMENT CLASS GROUPS

Equipment class group	Electric motor design type	Horsepower rating	Pole configuration	Enclosure
1	NEMA Design A & B*	1–500	2, 4, 6, 8	Open. Enclosed.
2	NEMA Design C*	1–200	4, 6, 8	Open. Enclosed.
3	Fire Pump Motors*	1–500	2, 4, 6, 8	Open. Enclosed.

* Including IEC equivalents.

''Design A'', ''Design B'' and ''Design C'' are NEMA-developed designations that define a motor's performance characteristics such as the locked-rotor torque, pull-up torque, breakdown torque, inrush current, and locked-rotor current. The motors within the equipment class groups in Table II.1 were further divided into equipment classes based on pole-configuration, enclosure type, and horsepower rating.

Issue B.1 DOE requests feedback on the current electric motors equipment class groups and whether changes to these individual equipment class groups and their descriptions should be made or whether certain class groups should be merged or separated. DOE also seeks feedback on whether combining certain class groups could impact product utility by eliminating any performance-related features or impact the stringency of the current energy conservation standard for this equipment. DOE also requests comment on whether it should consider separating any of the existing equipment class groups and whether such a change would impact equipment utility by eliminating any performance-related features or reduce any compliance burdens.

Issue B.2 DOE seeks information regarding any other new equipment class groups it should consider for inclusion in its analysis. Specifically, DOE requests information on the performance-related features (*e.g.,* input power supply, operating speed, etc.) that provide unique consumer utility and data detailing the corresponding impacts on energy use that would justify separate equipment class groups (*i.e.,* explanation for why the presence of these performance-related features would increase energy consumption).

2. Technology Assessment

In analyzing the feasibility of potential new or amended energy conservation standards, DOE uses information about existing and past technology options and prototype designs to help identify technologies that manufacturers could use to meet and/or exceed a given set of energy conservation standards under consideration. In consultation with interested parties, DOE intends to develop a list of technologies to consider in its analysis. That analysis will likely include a number of the technology options DOE previously considered during its most recent rulemaking for electric motors. A complete list of those prior options appears in Table II.2. *See also* 79 FR 30934, 30959.

TABLE II.2—TECHNOLOGY OPTIONS CONSIDERED IN THE DEVELOPMENT OF THE MAY 2014 FINAL RULE

Type of loss to reduce	Technology option
Stator I^2R Losses	Increase cross-sectional area of copper in stator slots.
Decrease the length of coil extensions.	
Rotor I^2R Losses	Increase cross-sectional area of end rings.
Increase cross-sectional area of rotor conductor bars.	
Use a die-cast copper rotor cage.	
Core Losses	Use electrical steel laminations with lower losses (watts/lb).
Use thinner steel laminations.	
Increase stack length (*i.e.,* add electrical steel laminations).	
Friction and Windage Losses.	Optimize bearing and lubrication selection.
Improve cooling system design.	
Stray-Load Losses	Reduce skew on rotor cage.
Improve rotor bar insulation.	

DOE is not aware of specific techniques manufacturers use to reduce stray-load losses, which are any losses that are not attributed to I^2R losses, core losses, or friction and windage losses, other than those already noted in Table II.2.

Issue B.3 DOE seeks information on the technologies listed in Table II.2 regarding their applicability to the current market and how these technologies may impact the efficiency of electric motors as measured according to the DOE test procedure. DOE also seeks information on how these technologies may have changed since their prior consideration during the May 2014 Final Rule analysis. Specifically, DOE seeks information on the range of efficiencies or performance characteristics that are currently available for each technology option.

Issue B.4 DOE seeks information on the technologies listed in Table II.2 regarding their market adoption, costs, and any concerns with incorporating them into products (*e.g.,* impacts on consumer utility, potential safety concerns, manufacturing/production/implementation issues, *etc.*), particularly as to changes that may have occurred since the publication of the May 2014 Final Rule.

Issue B.5 DOE seeks comment on other technology options that it should consider for inclusion in its analysis and details regarding the extent to which these technologies may impact product features or consumer utility. DOE also seeks input regarding the cost-effectiveness of implementing these options.

C. Screening Analysis

The purpose of the screening analysis is to evaluate the technologies that improve equipment efficiency to determine which technologies will be eliminated from further consideration and which will be passed to the engineering analysis for further consideration.

DOE determines whether to eliminate certain technology options from further consideration based on the following criteria:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology could not be achieved on the scale necessary to serve the relevant market at the time of the compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on equipment utility or equipment availability.* If a technology is determined to have significant adverse impact on the utility of the equipment to significant subgroups of consumers, or result in the unavailability of any covered equipment type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as equipment generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology will have significant adverse impacts on health or safety, it will not be considered further.

See 10 CFR part 430, subpart C, appendix A, sec. 4(a)(4) and 5(b).

Technology options identified in the technology assessment are evaluated against these criteria using DOE analyses and inputs from interested parties (*e.g.,* manufacturers, trade organizations, and energy efficiency advocates). Technologies that pass through the screening analysis are referred to as ''design options'' in the engineering analysis. Technology options that fail to meet one or more of the four criteria are eliminated from consideration.

Additionally, DOE notes that the four screening criteria do not directly address the proprietary status of technology options. DOE only considers potential efficiency levels achieved through the use of proprietary designs in the engineering analysis if they are not part of a unique pathway to achieve that efficiency level (*i.e.,* if there are other non-proprietary technologies capable of achieving the same efficiency level).

Table II.3 summarizes specific examples of design options that DOE screened out in the May 2014 Final Rule, the type of loss reduced, and the applicable screening criteria.

TABLE II.3—PREVIOUSLY SCREENED OUT DESIGN OPTIONS FROM THE MAY 2014 FINAL RULE

EPCA criteria (X = basis for screening out)	Screened technology option	Type of loss reduced			
		Technological feasibility	Practicability to manufacture, install, and service	Adverse impact on product utility	Adverse impacts on health and safety
Plastic Bonded Iron Powder (PBIP).	Core Losses	X			
Amorphous Steels	Core Losses	X			

Plastic Bonded Iron Powder (''PBIP'') is a method that can be employed to reduce core losses. PBIP uses two main ingredients: Metal powder and plastics. Combining the ingredients creates a material with low conductivity and high permeability. The metal particles are surrounded by an insulating plastic, which prevents electric current from developing in the material and helps to eliminate losses in the core due to eddy currents. Properties of PBIP can differ depending on the processing steps that are followed. If the metal particles are too closely compacted and begin to touch each other, the material will gain electrical conductivity, counteracting one of its most important features.

In the May 2014 Final Rule, DOE did not consider this technology option technologically feasible, because it had not been incorporated into a working prototype of an electric motor. 79 FR 30934, 30966. While DOE noted that a research team at Lund University in Sweden published a paper in 2007 about using PBIP in manufacturing, the same paper indicated that its study team produced inductors, transformers, and induction heating coils using PBIP, but has not yet produced a small electric motor.[5] (See chapter 4 of the May 2014 Final Rule TSD) Also, DOE was uncertain whether the PBIP material had the structural integrity to form into the necessary shape of an electric motor steel frame.

The use of amorphous metals in the rotor laminations is another method to improve the efficiency of electric motors by reducing core losses. Amorphous metal is extremely thin, has high electrical resistivity, and has little or no magnetic domain definition. Because of amorphous steel's high resistance, it exhibits a reduction in hysteresis and eddy current losses, which reduce overall losses in electric motors. However, amorphous steel is a very brittle material which makes it difficult to punch into motor laminations. In the May 2014 Final Rule, DOE did not consider this technology option technologically feasible because it had not been incorporated into a working prototype of an electric motor. 79 FR 30934, 30936. Furthermore, DOE was uncertain at the time whether amorphous metals are practicable to manufacture, install, and service, because a prototype amorphous metal electric motor had not been made.

Issue C.1 DOE requests feedback on what impact, if any, the four screening criteria described in this section would have on each of the technology options listed in Table II.2 with respect to electric motors. Similarly, DOE seeks information regarding how these same criteria would affect any other technology options not already identified in this document with respect to their potential use in electric motors.

Issue C.2 With respect to the screened-out design options listed in Table II.3, DOE seeks information on

[5] Horrdin, H., and E. Olsson. Technology Shifts in Power Electronics and Electric Motors for Hybrid Electric Vehicles: A Study of Silicon Carbide and Iron Powder Materials. 2007. Chalmers University of Technology. Göteborg, Sweden.

whether these options would, based on current and projected assessments regarding each of them, remain screened out under the four screening criteria described in this section. Also regarding each, what steps, if any, could be (or have already been) taken to facilitate the introduction of each method as a means to improve the energy performance of electric motors and, separately, what is the potential of each option to impact the consumer utility of an electric motor that uses it?

D. Engineering Analysis

The engineering analysis estimates the cost-efficiency relationship of equipment at different levels of increased energy efficiency (''efficiency levels''). This relationship serves as the basis for the cost-benefit calculations for consumers, manufacturers, and the Nation. In determining the cost-efficiency relationship, DOE estimates the increase in manufacturer production cost (''MPC'') associated with increasing equipment efficiency above the baseline, up to the maximum technologically feasible (''max-tech'') efficiency level for each equipment class.

DOE historically has used the following three methodologies to generate incremental manufacturing costs and establish efficiency levels (''ELs'') for analysis: (1) The design-option approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency-level approach, which provides the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed cost data for parts and material, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

1. Baseline Efficiency Levels

For each equipment class, DOE selects a baseline model as a reference point against which any changes resulting from new or amended energy conservation standards can be measured. The baseline model in each equipment class represents the characteristics of common or typical equipment in that class. Typically, a baseline model is one that meets the current minimum energy conservation standards and provides basic consumer utility.

If it determines that a rulemaking is merited, consistent with this analytical approach, DOE tentatively plans to consider the current minimum energy conservation standards (which went into effect June 1, 2016) to establish baseline efficiency levels for each equipment class group. The current standards for each equipment class, which are based on nominal full load efficiency, are found at 10 CFR 431.25.

Issue D.1 DOE requests feedback (including data) on whether using the current established energy conservation standards for electric motors are appropriate baseline efficiency levels for DOE to apply to each equipment class group in evaluating whether to amend the current energy conservation standards for these products.

Issue D.2 DOE requests feedback on the appropriate baseline efficiency levels for any newly analyzed equipment class groups that are not currently in place or for the contemplated combined equipment class groups, as discussed in section II.B.1 of this document. For newly analyzed equipment class groups or equipment classes, DOE requests energy use data to develop a baseline relationship between energy use, horsepower rating, number of poles, and enclosure type.

2. Maximum Available and Maximum Technologically Feasible Levels

As part of DOE's analysis, the maximum available efficiency level is the most efficient unit currently available on the market. For the May 2014 Final Rule, DOE did not directly analyze all 482 equipment classes. Rather, DOE selected and analyzed certain representative units from each equipment class group and based its overall analysis for all equipment classes with that equipment class group on those representative units. Results were then scaled to equipment classes that were not directly analyzed. The representative units from each equipment class group were determined based on the NEMA design type, horsepower rating, pole configuration and enclosure, in addition to corresponding shipment volumes, examining manufacturers' catalog data, and soliciting feedback from interested parties. For example, for equipment class group 1, which includes NEMA Design A and B motors, DOE selected only NEMA Design B motors as representative units to analyze in the engineering analysis. DOE chose NEMA Design B motors because NEMA Design B motors have slightly more stringent performance requirements—namely, their locked-rotor current has a maximum allowable level for a given rating. Consequently, NEMA Design B motors are slightly more restricted in terms of their maximum efficiency levels. By analyzing a NEMA Design B motor, DOE can ensure all designs covered in the equipment class group 1 analysis are technologically feasible. In addition, NEMA Design B units have much higher shipment volumes than NEMA Design A motors because most motor driven equipment is designed (and UL-listed) to run with NEMA Design B motors—which, as a result, is more likely to provide a broader picture of the impacts that would flow from amending the standards for electric motors. *See* 79 FR 30934, 30967 and chapter 5 of the technical support document (''TSD'') for that rulemaking.[6]

DOE selected three representative units to analyze in equipment class group 1 (''ECG1'') and two representative units in equipment class group 2 (''ECG2''). For equipment class group 3 (''ECG3''), DOE analyzed the same equipment classes as for ECG1 because fire pump electric motors are required to meet NEMA Design B performance standards as per NFPA 20, and ECG1 includes NEMA Design B motors. The current maximum available efficiencies for the representative units for each of the three equipment class groups are included in Table II.4.

[6] The TSD is available at: *https://www.regulations.gov/document?D=EERE-2010-BT-STD-0027-0108.*

TABLE II.4—MAXIMUM EFFICIENCY LEVELS CURRENTLY AVAILABLE

ECG	Electric motor design type	Pole configuration	Enclosure type	Horsepower rating (hp)	Maximum available motor efficiency (%)	Current energy conservation standard (%)
1	NEMA Design B	4-pole	Enclosed	5	91.0	89.5
				30	94.5	93.6
				75	96.2	95.4
2	NEMA Design C	4-pole	Enclosed	5	91.0	89.5
				50	95.0	94.5
3*	NEMA Design B	4-pole	Enclosed	5	91.0	87.5
				30	94.5	92.4
				75	96.2	94.1

* DOE analyzed the same equipment classes from ECG1 for ECG3.

DOE defines a max-tech efficiency level to represent the theoretical maximum possible efficiency if all available design options are incorporated in a model. In applying these design options, DOE would only include those that are compatible with each other that when combined, would represent the theoretical maximum possible efficiency. In many cases, the max-tech efficiency level is not commercially available because it is not economically feasible. In the May 2014 Final Rule, depending on the equipment class group, DOE determined max-tech efficiency levels using efficiencies for physical electric motors, energy modeling, and/or subject matter expert feedback. The energy models were based on using various technology (as discussed in section II.B.2), material (low loss electrical steel and increased stator copper), and geometry changes applicable to the specific equipment class groups. While all these product configurations had not likely been tested as prototypes available in the market, all the individual design options had been incorporated in available equipment, and therefore a compatible combination of the design options used for max-tech is theoretically possible.

Issue D.3 DOE seeks input on whether it is appropriate for ECG 1 and ECG 3 to use the same representative units for purposes of the engineering analysis.

Issue D.4 DOE seeks input on whether the maximum available efficiency levels discussed in this document are appropriate and technologically feasible for potential consideration as possible energy conservation standards for the products at issue—and if not, why not. DOE also requests feedback on whether the maximum available efficiencies presented in Table II.4 are representative of all other electric motor equipment classes not directly analyzed in the May 2014 Final Rule. If the range of possible efficiencies is different for the other equipment classes not directly analyzed, what alternative approaches should DOE consider using for those equipment classes and why?

Issue D.5 DOE seeks feedback on what design options would be incorporated at a max-tech efficiency level, and the efficiencies associated with those levels. As part of this request, DOE also seeks information as to whether there are limitations on the use of certain combinations of design options.

3. Manufacturer Production Costs and Manufacturing Selling Price

As described at the beginning of this section, the main outputs of the engineering analysis are cost-efficiency relationships that describe the estimated increases in manufacturer production cost associated with higher-efficiency products for the analyzed equipment classes. For the May 2014 Final Rule, DOE developed the cost-efficiency relationships by estimating the efficiency improvements and costs associated with incorporating specific design options into the assumed baseline model for each analyzed equipment class.

Issue D.6 DOE requests feedback on how manufacturers would incorporate the technology options listed in Table II.2 to increase the energy efficiency of electric motors beyond the baseline. This includes information on the order in which manufacturers would incorporate the different technologies to incrementally improve the efficiencies of equipment. DOE also requests feedback on whether increasing the energy efficiency of an electric motor would lead to other design changes that would not otherwise occur—and if so, what those changes would be. DOE is also interested in information regarding any potential impact of adopting a given design option on a manufacturer's ability to incorporate additional functions or attributes in response to consumer demand.

Issue D.7 DOE also seeks input on the increase in MPC associated with incorporating each design option. Specifically, DOE is interested in whether and how the design option cost estimates used in the May 2014 Final Rule have changed since the time of that analysis. DOE also requests information on the investments needed to incorporate specific design options (and combinations of options), including, but not limited to, costs related to new or modified tooling (if any), materials, engineering and development efforts to implement each design option (including combinations of options), and manufacturing/production impacts.

Issue D.8 requests comment on whether certain design options (or combinations of options) may not be applicable to (or may be incompatible with) specific equipment class groups or equipment classes.

As described in section II.D.2 of this document, DOE analyzed five representative units in the May 2014 Final Rule. DOE developed cost-efficiency curves for each of the equipment classes that were used as the input for the downstream analyses conducted in support of that rulemaking. See chapter 5 of the May 2014 Final Rule TSD for the cost-efficiency curves developed in that rulemaking.

Issue D.9 DOE seeks feedback on whether its tentative approach of analyzing a sub-set of equipment classes is appropriate for a future electric motor energy conservation standards rulemaking. DOE seeks comment on whether its prior approach of analyzing particular equipment classes and applying those results to the remaining classes remains appropriate in principle—and if not, why not? For example, if it is necessary to individually analyze more than the five

equipment classes used in the May 2014 Final Rule, please provide information on why aggregating certain equipment is not appropriate and suggestions on which additional classes that DOE should analyze. If the approach outlined in this document is not appropriate, what alternative approaches should DOE consider using as an alternative and why? If analyzing a different sub-set of electric motor classes is sufficient, which sub-sets should be analyzed, what minimum number of classes should be examined, and how should those selected classes be distributed among the 482 separate classes that DOE currently regulates?

To account for manufacturers' non-production costs and profit margin, DOE applies a non-production cost multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce. For the May 2014 Final Rule, DOE used three manufacturer markups to account for costs that are part of each motor leaving a manufacturer's facility:

- Handling and scrap factor: 2.5 percent markup. This markup was applied to the direct material production costs of each electric motor. It accounts for the handling of material and the scrap material that cannot be used in the production of a finished electric motor.
- Factory overhead: 17.5 or 18.0 percent markup. DOE applied factory overhead to the direct material production costs, including the handling and scrap factor, and labor estimates. For aluminum rotor designs a 17.5 percent markup was used, but for all copper rotor designs, an 18.0 percent markup was used to factor in increased depreciation for the equipment.
- Non-production: 37–45 percent markup. This markup reflects costs including sales and general administrative, research and development costs, interest payments, and profit factor. DOE applied the non-production markup to the sum of the direct material production, the direct labor, the factory overhead and the product conversion costs. For the analyzed electric motors at or below 30-horsepower this markup was 37 percent and for electric motors above 30-horsepower this markup was 45 percent. This increase accounted for the extra profit margin manufacturers may receive on larger electric motors that are sold in smaller volumes.

DOE developed these estimated markups based on corporate reports and conversations with manufacturers and experts. See chapter 5 of the May 2014 Final rule TSD for further detail.

Issue D.10 DOE requests feedback on whether the manufacturer markups used in the May 2014 final rule are still appropriate for DOE to use when evaluating whether to amend its current standards. If the markups require revision, what specific revisions are needed for each? Are there additional markups that DOE should also consider—if so, which ones and why?

E. Distribution Channels

In generating end-user price inputs for the life-cycle cost (''LCC'') analysis and national impact analysis (''NIA''), DOE must identify distribution channels (*i.e.,* how the products are distributed from the manufacturer to the consumer), and estimate relative sales volumes through each channel. In the May 2014 Final Rule, DOE accounted for seven main distribution channels for electric motors and estimated their respective shares of sales volume (see Table II.5). Should sufficient information become available, DOE may consider modifying these distribution channels and respective share of sales volume.

TABLE II.5—FRACTION OF ELECTRIC MOTORS SHIPMENTS BY DISTRIBUTION CHANNELS

Distribution channel	Shipments (%)
Manufacturer → OEM → End-user	25
Manufacturer → OEM → Equipment Distributor → End-user	25
Manufacturer → Retailers → End-User	24
Manufacturer → Equipment Wholesaler → OEM → End-user	23
Manufacturer → Contractor → End-user	0.75
Manufacturer → Distributors or Retailers → Contractor → End-User	0.75
Manufacturer → End-user	1.5

In addition to these distribution channel markups, DOE estimated the shipping costs of the motors. More-efficient motors are often larger and heavier than less efficient motors and DOE also accounted for any increase in shipping costs due to changes in weight.

Issue E.1 DOE requests information on the existence of any distribution channels other than the seven channels that were identified in the May 2014 Final Rule and as described in section E. DOE also requests data on the fraction of sales that go through these channels and any other identified channels.

F. Energy Use Analysis

As part of the rulemaking process, DOE conducts an energy use analysis to identify how equipment is used by consumers, and thereby determine the energy savings potential of energy efficiency improvements. The energy use analysis is meant to represent the energy consumption of a given product or equipment when used in the field. In addition to the rated nominal full-load efficiency as determined by the DOE test procedure, DOE uses information related to motor annual operating hours, motor operating load, and part-load efficiency to characterize energy consumption in the field.

In the May 2014 Final Rule, DOE determined the annual energy consumption of electric motors by multiplying the power consumed by the electric motor while in operation by the annual hours of operation in various sectors and applications. The power consumed in operation was established as a function of the motor's load and of the part-load efficiency of electric motors as characterized in the engineering analysis. DOE also included a sensitivity analysis to analyze the impacts of varying nominal speeds across efficiency levels to account for the energy use impacts of having more efficient motors potentially run at slightly higher speeds.[7] DOE used data referenced in an Easton Consultants report to establish the share of electric motors by sector (commercial, industrial and agriculture).[8] For the industrial sector, DOE derived the share of each motor application, the distributions of operating hours and load using data

[7] A more efficient motor can have less slip than a less efficient motor, an attribute that can result in a higher operating speed and a potential overloading of the motor.

[8] Easton Consultants, I. (2000), *Variable Frequency Drive.* Retrieved February 9, 2011, from *http://neea.org/research/reports/E00–054.pdf.*

from field surveys [9] and other sources.[10] For fire pumps, DOE assumed a uniform distribution of operating hours between 0.5 hours and up to 6 hours.

Issue F.1 DOE seeks input on data sources to help characterize the variability in annual energy consumption for electric motors. Specifically, DOE is requesting data and information (by application and sector) related to: (1) The distribution of operating hours; (2) the distribution of motor average annual loads; and (3) applicable load profiles (*i.e.,* percentage of annual operating hours spent at specified load points), including the distribution of those profiles.

G. Life-Cycle Cost and Payback Period Analysis

DOE conducts the LCC and payback period (''PBP'') analysis to evaluate the economic effects of potential energy conservation standards for electric motors on individual customers. For any given efficiency level, DOE measures the PBP and the change in LCC relative to an estimated baseline level. The LCC is the total customer expense over the life of the equipment, consisting of purchase, installation, and operating costs (expenses for energy use, maintenance, and repair). Inputs to the calculation of total installed cost include the cost of the equipment—which includes MSPs, distribution channel markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, equipment lifetimes, discount rates, and the year that compliance with new and amended standards is required. In this section, DOE discusses specific inputs to the LCC and PBP analysis for which it requests comment and feedback.

1. Installation, Repair and Maintenance Costs

In the May 2014 Final Rule, DOE reviewed motor installation cost data from RS Means Electrical Cost Data 2013 which showed a variation in installation costs by horsepower (for three-phase electric motors), but not by efficiency. Therefore, DOE assumed there was no variation in installation costs between a baseline efficiency electric motor and a higher efficiency electric motor. 79 FR 30934, 30978. DOE reviewed repair and maintenance cost data from Vaughen's Price Publishing Company,[11] which publishes an industry reference guide on motor repair and maintenance pricing. The price of replacing bearings, which is the most common maintenance practice, was found to be the same at all efficiency levels. Therefore, DOE did not consider variations in maintenance costs by efficiency levels for electric motors in its analysis. DOE accounted for the differences in repair costs of a higher efficiency motor compared to a baseline efficiency motor.[12] Based on data from Vaughen's, DOE derived a model to estimate repair costs by horsepower, enclosure and pole, for each efficiency level. As part of a potential energy conservation standards rulemaking, should one be conducted, DOE would review available motor installation, maintenance and repair cost information and update these inputs as appropriate.

Issue G.1 DOE requests feedback and data on whether installation and maintenance costs at higher efficiency levels differ in comparison to the baseline installation and maintenance costs for any of the specific technology options listed in Table II.2. To the extent that these costs differ, DOE seeks supporting data and the reasons for those differences.

Issue G.2 DOE requests information and data on the frequency of repair and repair costs by equipment class for the technology options listed in Table II.2. While DOE is interested in information regarding each of the listed technology options, DOE is also interested in whether consumers simply replace the equipment when it fails as opposed to repairing it.

2. Lifetime

The equipment lifetime is the age at which given equipment is retired from service. In the May 2014 Final Rule, DOE estimated the mechanical lifetime of electric motors in hours (*i.e.,* the total number of hours an electric motor operates throughout its lifetime), depending on its horsepower size and sector of application. DOE then developed Weibull distributions of mechanical lifetimes. The lifetime in years for a sampled electric motor was then calculated by dividing the sampled mechanical lifetime by the sampled annual operating hours of the electric motor.

In the May 2014 Final Rule, DOE established sector-specific motor lifetime estimates to account for differences in maintenance practices and field usage conditions. DOE consulted a subject matter expert to obtain lifetime information for the industrial sector. For the agricultural and commercial sector, DOE referred to published average lifetimes cited in previous publications.[13] See Chapter 8 of the May 2014 Final Rule TSD for further discussion of the lifetime estimate.

Issue G.3 DOE seeks data and input on the appropriate equipment lifetimes for electric motors both in years and by sector and in lifetime mechanical hours that DOE should apply when performing its analysis.

3. Efficiency Distribution in the No-New Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considers the projected distribution (market shares) of equipment efficiencies in the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards) in the compliance year.

In the May 2014 Final Rule, DOE used the number of models meeting the requirements of each efficiency level from six major manufacturers and one distributor's catalog data to develop the ''no new standards'' case efficiency distributions in the base year (2012). The distribution was estimated separately for each equipment class group and horsepower range. Beyond 2012, for NEMA Design A and B motors,

[9] Database of motor nameplate and field measurement data compiled by the Washington State University Extension Energy Program (''WSU'') and Applied Proactive Technologies (''APT'') under contract with the New York State Energy Research and Development Authority (''NYSERDA''). 2011. This database is composed of information gathered by WSU and APT during 123 industrial motor surveys or assessments: 11 motor assessments were conducted between 2005 and 2011 and occurred in industrial plants; 112 industrial motor surveys were conducted between 2005 and 2011 and were funded by NYSERDA and conducted in New York State. *See also* Strategic Energy Group (January, 2008), Northwest Industrial Motor Database Summary. Regional Technical Forum. Available at *http://rtf.nwcouncil.org/subcommittees/osumotor/Default.htm*

[10] U.S. Department of Agriculture (February 2010), 2007 Census of Agriculture Farm and Ranch Irrigation Survey, from *http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Farm_and_Ranch_Irrigation_Survey/index.php. See also* Gallaher, M., Delhotal, K., & Petrusa, J. (2009), Estimating the potential CO_2 mitigation from agricultural energy efficiency in the United States, Energy Efficiency (2), 207–220.

[11] Vaughen's (2011, 2013), Vaughen's Motor & Pump Repair Price Guide, 2011, 2013 Edition. *http://www.vaughens.com/.*

[12] DOE considered a repair as including a rewind and reconditioning of the motor.

[13] Nadel, Steven et al. (2002), Energy Efficient Motor Systems: A Handbook on Technology, Program, and Policy Opportunities, American Council for an Energy-Efficient Economy, Washington, DC. See also Gallaher, M., Delhotal, K., & Petrusa, J. (2009), Estimating the potential CO_2 mitigation from agricultural energy efficiency in the United States, Energy Efficiency (2), 207–220.

DOE assumed the efficiency distributions varied over time based on historical data [14] for the market penetration of more efficient motors. For other equipment class groups, DOE did not find sufficient data to develop efficiency trends for them—and as a result, DOE kept the base case efficiency distributions in the compliance year equal to 2012 levels.

Issue G.4 DOE seeks data and input on the appropriate efficiency distribution in the no-new standards case for electric motors.

H. Shipments

DOE develops shipments forecasts of electric motors to calculate the national impacts of potential amended energy conservation standards on energy consumption, net present value (''NPV''), and future manufacturer cash flows. DOE shipments projections are based on available historical data broken out by equipment class, horsepower, and efficiency. Current sales estimates allow for a more accurate model that captures recent trends in the market.

In the May 2014 Final Rule, DOE's shipments projection assumed that electric motor sales are driven by machinery production growth for equipment, including motors. DOE estimated that growth rates for total motor shipments correlate to growth rates in fixed investment in equipment and structures including motors, as provided by the U.S. Bureau of Economic Analysis.[15] The base year market distributions were maintained over the 30-year analysis period. See Chapter 9 of the 2014 May Final Rule TSD for further discussion of the prior shipments analysis. DOE may consider using a similar approach if it undertakes an energy conservation standards rulemaking.

Issue H.1 DOE requests 2019 annual sales data (or the most recent year available) —*i.e.,* number of shipments— for electric motors by equipment class. If disaggregated data of annual sales are not available at the equipment class level, DOE requests more aggregated data of annual sales at the equipment class group level.

Issue H.2 DOE requests 2019 data (or the most recent year available) on the fraction of sales in the industrial, agriculture, and commercial sectors for electric motors by equipment class group.

Issue H.3 DOE requests information on the rate at which annual sales (*i.e.,* number of shipments) of electric motors is expected to change in the next 5–10 years. If possible, DOE requests this information by equipment class. If disaggregated data of annual sales are not available at the equipment class level, DOE requests more aggregated data of annual sales at the equipment class group level.

Issue H.4 DOE requests data and information on any trends in the motor market that could be used to forecast expected trends in market share by efficiency levels for each equipment class. If disaggregated data are not available at the equipment class level, DOE requests aggregated data at the equipment class group level.

I. Manufacturer Impact Analysis

The purpose of the manufacturer impact analysis (''MIA'') is to estimate the financial impact of amended energy conservation standards on manufacturers of electric motors, and to evaluate the potential impact of such standards on direct employment and manufacturing capacity. The MIA includes both quantitative and qualitative aspects. The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (''GRIM''), an industry cash-flow model adapted for electric motors included in this analysis, with the key output of industry net present value (''INPV''). The qualitative part of the MIA addresses the potential impacts of energy conservation standards on direct employment and manufacturing capacity, as well as factors such as product characteristics, impacts on particular subgroups of firms, industry competition, and important market and product trends.

As part of the MIA, DOE intends to analyze impacts of amended energy conservation standards on subgroups of manufacturers of the covered equipment, including small business manufacturers. DOE uses the Small Business Administration's (''SBA'') small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the applicable North American Industry Classification System (''NAICS'') code.[16] Manufacturing of consumer electric motors is classified under NAICS 335312, ''Motor and Generator Manufacturing'' and the SBA sets a threshold of 1,250 employees or less for a domestic entity to be considered as a small business. This employee threshold includes all employees in a business' parent company and any other subsidiaries.

One aspect of assessing manufacturer burden involves examining the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

Issue I.1 To the extent feasible, DOE seeks the names and contact information of any domestic or foreign-based manufacturers that distribute electric motors in the United States.

Issue I.2 DOE identified small businesses as a subgroup of manufacturers that could be disproportionally impacted by amended energy conservation standards. DOE requests the names and contact information of small business manufacturers, as defined by the SBA's size threshold, of electric motors that distribute equipment in the United States. In addition, DOE requests comment on any other manufacturer subgroups that could be disproportionally impacted by amended energy conservation standards. DOE requests feedback on any potential approaches that could be considered to address adverse impacts on manufacturers, including small businesses.

Issue I.3 DOE requests information regarding the cumulative regulatory burden impacts on manufacturers of electric motors associated with (1) other DOE standards applying to different products that these manufacturers may

[14] Robert Boteler, USA Motor Update 2009, Energy Efficient Motor Driven Systems Conference 2009, Proceedings of the 6th International Conference eemods '09—Energy Efficiency in Motor Driven Systems, Nantes, FRANCE, 14–17 September 2009 (Volume 1) . Available at: *https://ec.europa.eu/jrc/en/publication/books/proceedings-6th-international-conference-eemods-09-energy-efficiency-motor-driven-systems-nantes.*

[15] Bureau of Economic Analysis (March 01, 2012), Private Fixed Investment in Equipment and Software by Type and Private Fixed Investment in Structures by Type (Available at: *http://www.bea.gov/iTable/iTable.cfm?ReqID=12&step=1*).

[16] Available online at *https://www.sba.gov/document/support-table-size-standards.*

also make and (2) product-specific regulatory actions of other Federal agencies. DOE also requests comment on its methodology for evaluating cumulative regulatory burden and whether there are any flexibilities it can (and should) consider that would reduce this burden while remaining consistent with the requirements of EPCA.

J. Other Energy Conservation Standards Topics

1. Market Failures

In the field of economics, a market failure is a situation in which the market outcome does not maximize societal welfare. Such an outcome would result in unrealized potential welfare. DOE welcomes comment on any aspect of market failures, especially those in the context of amended energy conservation standards for electric motors.

2. Emerging Smart Technology Market

DOE published an RFI on the emerging smart technology appliance and equipment market. 83 FR 46886 (Sept. 17, 2018). In that RFI, DOE sought information to better understand market trends and issues in the emerging market for appliances and commercial equipment that incorporate smart technology. DOE's intent in issuing the RFI was to ensure that DOE did not inadvertently impede such innovation in fulfilling its statutory obligations in setting efficiency standards for covered products and equipment. DOE seeks comments, data and information on the issues presented in the RFI as they may be applicable to energy conservation standards for electric motors.

3. Other Issues

Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. *See* 82 FR 9339 (Feb. 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures DOE could take to lower the cost of its energy conservation standards rulemakings, recordkeeping and reporting requirements, and compliance and certification requirements applicable to electric motors while remaining consistent with the requirements of EPCA.

III. Submission of Comments

DOE invites all interested parties to submit in writing by the date specified previously in the **DATES** section of this document, comments and information on matters addressed in this document and on other matters relevant to DOE's consideration of amended energy conservations standards for electric motors. After the close of the comment period, DOE will review the public comments received and may begin collecting data and conducting the analyses discussed in this document.

Submitting comments via http://www.regulations.gov. The *http://www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies Office staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *http://www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential

status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process.

Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process or would like to request a public meeting should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on March 10, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the Federal Register.

Signed in Washington, DC, on May 6, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2020–09989 Filed 5–20–20; 8:45 am]

BILLING CODE 6450–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1006

[Docket No. CFPB–2020–0010]

RIN 3170–AA41

Debt Collection Practices (Regulation F); Extension of Comment Period

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Supplemental notice of proposed rulemaking; extension of comment period.

SUMMARY: On March 3, 2020, the Bureau of Consumer Financial Protection (Bureau) published in the **Federal Register** a Supplemental Notice of Proposed Rulemaking (SNPRM) requesting comment on the Bureau's proposal to amend Regulation F, which implements the Fair Debt Collection Practices Act (FDCPA), to require debt collectors to make certain disclosures when collecting time-barred debts. The SNPRM provided a 60-day comment period that was set to close on May 4, 2020. In a document published in the **Federal Register** on March 27, 2020, the Bureau extended the comment period until June 5, 2020. To allow interested persons more time to consider and submit their comments, the Bureau has determined that a further extension of the comment period until August 4, 2020, is appropriate.

DATES: The comment period for the debt collection SNPRM published March 3, 2020, at 85 FR 12672, is extended. Responses to the SNPRM must now be received on or before August 4, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2020–0010 or RIN 3170–AA41, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2020-NPRM-DebtCollection@cfpb.gov.* Include Docket No. CFPB–2020–0010 or RIN 3170–AA41 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID-19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, and in light of difficulties associated with mail and hand deliveries during the COVID–19 pandemic, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, once the CFPB's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–9169.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary or sensitive personal information, such as account numbers, Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Seth Caffrey or Kristin McPartland, Senior Counsels, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: On February 21, 2020, the Bureau issued an SNPRM proposing to amend Regulation F, 12 CFR part 1006, to prescribe Federal rules governing the activities of debt collectors, as that term is defined in the FDCPA. The SNPRM was published in the **Federal Register** on March 3, 2020.[1] The SNPRM proposed to require debt collectors to make certain disclosures when collecting time-barred debts.

The SNPRM provided a 60-day public comment period that was set to close on May 4, 2020. In light of the challenges posed by the COVID–19 pandemic, and in response to requests from stakeholders to give interested parties more time to conduct outreach to relevant constituencies and to properly address the many questions presented in the SNPRM, the Bureau extended the comment period until June 5, 2020.[2] Since extending the comment period, the Bureau has received requests from a consumer advocacy group, a debt collection trade association, and three State Attorneys General to extend the comment period for an additional 60-

[1] 85 FR 12672 (Mar. 3, 2020).

[2] 85 FR 17299 (Mar. 27, 2020).

day period. These stakeholders state that the COVID-19 pandemic continues to make it difficult to respond to the SNPRM thoroughly. The Bureau agrees that the pandemic makes it difficult to respond to the SNPRM thoroughly and to determine when stakeholders will be able to do so. To ensure that stakeholders have the time they need to provide such responses, the Bureau concludes that an extension of the SNPRM comment period to August 4, 2020, is appropriate. This extension should allow interested parties more time to prepare responses to the SNPRM without delaying the rulemaking on this topic. The SNPRM comment period will now close on August 4, 2020.

Signing Authority

The Director of the Bureau, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

Dated: May 15, 2020.

Laura Galban,

Federal Register Liaison, Bureau of Consumer Financial Protection.

[FR Doc. 2020–10966 Filed 5–20–20; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0994; Product Identifier 2017–SW–002–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for Airbus Helicopters Model SA330J helicopters that proposed to require replacing certain left-hand (LH) and right-hand (RH) hydraulic pumps. The NPRM was prompted by reports that bolts that attach the cover of the hydraulic pump were broken. This action revises the NPRM by expanding the applicability, changing the proposed requirements, and correcting nomenclature. Since this imposes an additional burden over that proposed in the NPRM, the FAA is reopening the comment period to allow the public the chance to comment on these changes.

DATES: The FAA must receive comments on this SNPRM by July 20, 2020.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0994; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

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

FOR FURTHER INFORMATION CONTACT: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to remove AD 2017–14–05, Amendment 39–18949 (82 FR 31899, July 11, 2017) (''AD 2017–14–05'') and add a new AD. AD 2017–14–05 applies to Airbus Helicopters Model SA330J helicopters with certain serial-numbered LH and RH hydraulic pumps part number (P/N) FR65WEO2005–175A installed. EASA, which is the Technical Agent for the Member States of the European Union, had issued EASA Emergency AD No. 2016–0264–E, dated December 22, 2016 (EASA AD 2016–0264–E), which prompted AD 2017–14–05. EASA had advised of reports of broken screws (bolts) that attach the cover of the hydraulic pump. Subsequent investigation identified a batch of screws that have intrinsic embrittlement and reduced mechanical properties because hydrogen was introduced into this batch of screws during production. Accordingly, AD 2017–14–05 requires replacing the RH hydraulic pump within 15 hours time-in-service (TIS) and prohibits the installation of an affected hydraulic pump on any helicopter. The actions of AD 2017–14–05 are intended to prevent failure of a hydraulic pump cover attachment bolt, which could result in loss of fluid from the hydraulic pump, loss of the hydraulic system, and subsequent loss of control of the helicopter.

AD 2017–14–05 requires shorter-term requirements that did not allow enough time to provide notice and opportunity for prior public comment. The NPRM was issued to add a longer-term

requirement that allowed enough time to provide notice and opportunity for prior public comment. The NPRM published in the **Federal Register** on October 21, 2019 (84 FR 56152), and proposed to require replacing an affected RH hydraulic pump within 15 hours TIS from July 26, 2017 (the effective date of AD 2017–14–05), replacing an affected LH hydraulic pump within 110 hours TIS, and also proposed to prohibit installing an affected hydraulic pump on any helicopter.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, it was determined that the NPRM addressed only helicopters with affected hydraulic pumps installed on both the LH and RH sides. However, the FAA intended to include helicopters that have only one affected hydraulic pump installed on either the LH or RH side as well. This SNPRM expands the applicability to include helicopters that have an affected hydraulic pump on one or both sides and changes the proposed requirements to address helicopters with an affected hydraulic pump installed on only one side. Further, the nomenclature of ''screw'' has been corrected to ''bolt'' in this SNPRM.

Additionally, since the FAA issued the NPRM, the website address for Airbus Helicopters has changed.

Comments

After the NPRM was published, the FAA received comments from two commenters. However, the comments addressed neither the proposed actions nor the determination of the cost to the public. Therefore, the FAA has made no changes based on these comments.

FAA's Determination

The FAA is proposing this SNPRM after evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop on other helicopters of these same type designs. Certain changes described above expand the scope of the original NPRM. As a result, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Related Service Information

The FAA reviewed Airbus Helicopters Emergency Alert Service Bulletin No. SA330–29.12, Revision 0, dated December 22, 2016, which specifies removing Nexter Mechanics hydraulic pumps P/N FR65WEO2005–175A with certain serial numbers (S/Ns). If both the RH and LH hydraulic pumps have an affected P/N and S/N, the service information specifies replacing the RH hydraulic pump before further flight and the LH hydraulic pump within 110 flying hours or 6 months. If only one hydraulic pump has an affected P/N and S/N, the service information specifies replacing it within 110 flying hours or 6 months. The service information also specifies that, for 6 months after receipt of the service information, an affected hydraulic pump must be ''returned to conformity'' by complying with Nexter Mechanics Alert Service Bulletin No. NM/INGE/16–140, Revision 0, dated December 22, 2016, before installation.

Proposed Requirements of the SNPRM

For helicopters with an affected hydraulic pump installed on both the LH and RH sides, this SNPRM would require replacing the RH hydraulic pump within 15 hours TIS from July 26, 2017 (the effective date of AD 2017–14–05) and replacing the LH hydraulic pump within 110 hours TIS. For helicopters with an affected hydraulic pump installed on either the LH or RH side, this SNPRM would require replacing the affected hydraulic pump within 110 hours TIS. This SNPRM would also prohibit installation of an affected hydraulic pump on any helicopter.

Costs of Compliance

The FAA estimates that this proposed AD would affect 24 helicopters of U.S. Registry. Labor costs are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this proposed AD.

Replacing a hydraulic pump would take about 2 work-hours and parts would cost about $2,500 for an estimated cost of $2,670 per hydraulic pump.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2017–14–05, Amendment 39–18949 (82 FR 31899, July 11, 2017), and adding the following new AD:

Airbus Helicopters: Docket No. FAA–2018–0994; Product Identifier 2017–SW–002–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model SA330J helicopters, certificated in any category, with a left-hand (LH) or a right-hand (RH) hydraulic pump part number FR65WEO2005–175A with a serial number 4108, 4141, 4177, 4227, 4241, 4284, 4377, 4422, 4570, 4573, 4574, 4641, 4649, 4668, 4766, 4802, 4821, 4831, 4837, 4888, 4896, 4946, 4985, 5023, 5071, 5304, 5366, 5376, 5409, 5442, 5486, 5599, 5630, 94075/01, or 94048/01 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of a bolt attaching the hydraulic pump cover. This condition could result in loss of fluid from the hydraulic pump, resulting in loss of the hydraulic system and subsequent loss of helicopter control.

(c) Affected ADs

This AD replaces AD 2017–14–05, Amendment 39–18949 (82 FR 31899, July 11, 2017) (''AD 2017–14–05'').

(d) Comments Due Date

The FAA must receive comments on this SNPRM by July 20, 2020.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) For helicopters with both a LH and RH hydraulic pump that is listed in paragraph (a) of this AD installed:

(i) Within 15 hours time-in-service (TIS) from July 26, 2017 (the effective date of AD 2017–14–05), replace the RH hydraulic pump with an airworthy hydraulic pump that is not listed in paragraph (a) of this AD.

(ii) Within 110 hours TIS from the effective date of this AD, replace the LH hydraulic pump with an airworthy hydraulic pump that is not listed in paragraph (a) of this AD.

(2) For helicopters with either a LH or RH hydraulic pump that is listed in paragraph (a) of this AD installed, within 110 hours TIS from the effective date of this AD, replace the hydraulic pump with an airworthy hydraulic pump that is not listed in paragraph (a) of this AD.

(3) After July 26, 2017 (the effective date of AD 2017–14–05), do not install on any helicopter a hydraulic pump that is listed in paragraph (a) of this AD.

(g) Special Flight Permits

Special flight permits are prohibited.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

(i) Additional Information

(1) Airbus Helicopters Emergency Alert Service Bulletin No. SA330–29.12, Revision 0, dated December 22, 2016, and Nexter Mechanics Alert Service Bulletin No. NM/INGE/16–140, Revision 0, dated December 22, 2016, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD No. 2016–0264–E, dated December 22, 2016. You may view the EASA AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2018–0994.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 2913, Hydraulic Pump (Electric/Engine) Main.

Issued on May 15, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–10907 Filed 5–20–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Investment Security

31 CFR Part 800

RIN 1505–AC68

Provisions Pertaining to Certain Investments in the United States by Foreign Persons

AGENCY: Office of Investment Security, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify certain provisions in the regulations of the Committee on Foreign Investment in the United States that implement section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment Risk Review Modernization Act of 2018. Specifically, this proposed rule would modify the mandatory declaration provision for certain foreign investment transactions involving a U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies. It also makes clarifying amendments to the definition for the term ''substantial interest.''

DATES: Written comments must be received by June 22, 2020.

ADDRESSES: Written comments on this proposed rule may be submitted through one of two methods:

- *Electronic Submission:* Comments may be submitted electronically through the Federal government eRulemaking portal at *https://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department of the Treasury (Treasury Department) to make the comments available to the public. Please note that comments submitted through *https://www.regulations.gov* will be public, and can be viewed by members of the public.
- *Mail:* Send to U.S. Department of the Treasury, Attention: Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

Please submit comments only and include your name and company name (if any), and cite ''*Provisions Pertaining to Certain Investments in the United States by Foreign Persons*'' in all correspondence. In general, the Treasury Department will post all comments to *https://www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For questions about this rule, contact: Laura Black, Director of Investment Security Policy and International Relations; Meena R. Sharma, Deputy Director of Investment Security Policy and International Relations; or Alexander Sevald, Senior Policy Advisor, at U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220; telephone: (202) 622–3425; email: *CFIUS.FIRRMA@treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. The Statute

On August 13, 2018, the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Subtitle A of Title XVII of Public Law 115–232, 132 Stat. 2173, was enacted. FIRRMA amends section 721 (section 721) of the Defense Production Act of 1950, as amended (DPA), which delineates the authorities and jurisdiction of the

Committee on Foreign Investment in the United States (CFIUS or the Committee). Executive Order 13456, 73 FR 4677 (Jan. 23, 2008), directs the Secretary of the Treasury to issue regulations implementing section 721. This proposed rule is being issued pursuant to that authority.

FIRRMA maintains the Committee's jurisdiction over any transaction which could result in foreign control of any U.S. business, and broadens the authorities of the President and CFIUS under section 721 to review and take action to address national security concerns arising from certain non-controlling investments and real estate transactions involving foreign persons. FIRRMA also modernizes CFIUS's processes to better enable timely and effective reviews of transactions falling under its jurisdiction, including by introducing the concept of a declaration—an abbreviated notification on which the Committee must take action under a 30-day assessment period—as an alternative to a voluntary notice, which had been the traditional means of filing a transaction with CFIUS.

FIRRMA also continues the largely voluntary nature of the CFIUS process with respect to most transactions. However, notifying CFIUS of a transaction is mandatory in some circumstances. Specifically, FIRRMA authorizes CFIUS to mandate through regulations the submission of a declaration for covered transactions involving certain U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies. Implementation of that authority is the primary subject of this proposed rule. FIRRMA also requires declarations for certain covered transactions where a foreign government has a ''substantial interest'' in a foreign person that will acquire a substantial interest in certain types of U.S. businesses. This proposed rule makes clarifying amendments with respect to the definition of substantial interest. In both cases of mandatory declarations, parties have the option of filing a notice rather than submitting a declaration if they so choose.

B. Existing Declaration Requirement for Certain Transactions Involving U.S. Businesses With Critical Technologies

As background, on October 11, 2018, the Treasury Department published an interim rule that implemented—on a temporary basis as a pilot program—a declaration requirement for certain foreign investment transactions involving U.S. businesses with certain activities involving one or more critical technologies (Pilot Program Interim Rule). 83 FR 51322. Specifically, the Pilot Program Interim Rule made effective and implemented on November 10, 2018, a part of the Committee's jurisdiction over certain non-controlling investments, and established mandatory declarations for certain non-controlling investments in, and certain transactions that could result in control by a foreign person of, U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies in connection with any of 27 industries identified by reference to the North American Industry Classification System (NAICS). The Pilot Program Interim Rule provided for a public comment period, and a number of comments were received. Additional comments on the scope of this mandatory declaration pilot program were received in connection with the notice of proposed rulemaking published on September 24, 2019, proposing amendments to 31 CFR part 800 to implement provisions of FIRRMA more broadly. 84 FR 50174. On January 17, 2020, the Treasury Department published a final rule at 85 FR 3112 (Part 800 Rule) amending 31 CFR part 800 to implement provisions of FIRRMA, and the final rule took effect on February 13, 2020. With respect to the mandatory declarations for critical technology transactions, the Part 800 Rule largely incorporates the scope of the Pilot Program Interim Rule, which is based on whether a transaction involves certain U.S. businesses with specified activities involving critical technologies and a nexus to industries identified by NAICS codes. In response to public comments, and as described in more detail in the preamble to the Part 800 Rule, certain modifications were made in the Part 800 Rule. In particular, the Part 800 Rule exempts from the critical technology transaction declaration requirement (but not CFIUS jurisdiction) certain transactions involving excepted investors (as defined in the Part 800 Rule); entities subject to an agreement to mitigate foreign ownership, control, or influence pursuant to the National Industrial Security Program regulations; certain encryption technologies; and certain investment funds managed exclusively by, and ultimately controlled by, U.S. nationals. The Pilot Program Interim Rule continues to apply only to transactions falling within the scope of that rule and for which specified actions were taken on or after its effective date and prior to the effective date of the Part 800 Rule (*i.e.,* from November 10, 2018, through February 12, 2020, as described in 31 CFR 801.103). The scope of mandatory declarations for critical technology transactions in the Part 800 Rule will continue to apply until this rulemaking is finalized.

C. Proposed Rule Requiring Declarations for Certain Transactions Involving U.S. Businesses With Critical Technologies

In further consideration of public comments submitted on the prior rulemakings discussed above, and as informed by the Committee's experience assessing mandatory declarations for certain transactions involving critical technologies for over a year, as well as other national security considerations, this proposed rule modifies the scope of the mandatory declaration provision for certain transactions involving critical technologies. Consistent with CFIUS processes generally, the proposed rule reflects extensive consultation with CFIUS member agencies and the conclusion that a provision continuing the implementation of mandatory declarations for transactions involving critical technologies furthers the protection of national security.

The proposed rule revises the declaration requirement for certain critical technology transactions so that it is based on whether certain U.S. government authorizations would be required to export, re-export, transfer (in country), or retransfer the critical technology or technologies produced, designed, tested, manufactured, fabricated, or developed by the U.S. business to certain transaction parties and foreign persons in the ownership chain. The proposed rule removes the NAICS code criteria and the list of NAICS codes at appendix B to the Part 800 Rule. In focusing on export control requirements for the critical technologies, the proposed rule leverages the national security foundations of the established export control regimes, which require licensing or authorization in certain cases based on an analysis of the particular item and end user, and the particular foreign country for export, re-export, transfer (in country), or retransfer. To accomplish this, the proposed rule amends § 800.104 (applicability rule) and § 800.401 (mandatory declarations) and introduces two new definitions: ''U.S. regulatory authorization'' and ''voting interest for purposes of critical technology mandatory declarations.''

The proposed rule does not modify the definition of ''critical technologies,'' which is defined by FIRRMA, and implemented at § 800.215 of the Part 800 Rule. This proposed rule instead prescribes the types of transactions

subject to mandatory declarations based on whether certain types of regulatory licenses or authorizations would be required for export and related activities involving the specific critical technology of the U.S. business. More broadly, consistent with FIRRMA and the Export Control Reform Act of 2018 (ECRA), CFIUS will continue its role in the process to identify emerging and foundational technologies as set forth in section 1758(a) of ECRA.

D. Clarifying Amendment to Definition of ''Substantial Interest'' at § 800.244(b) and (c)

The proposed rule also makes clarifying amendments to paragraphs (b) and (c) of the definition of substantial interest at § 800.244 of the Part 800 Rule, which establishes how to determine the percentage interest held indirectly by one entity in another for purposes of that term. In particular, the proposed rule clarifies that paragraph (b) applies only where a general partner, managing member, or equivalent primarily directs, controls, or coordinates the activities of the entity. It also removes the word ''voting'' before ''interest'' wherever it appears in paragraph (c) so that the calculation rule clearly applies to the calculation of ''voting interests'' as described in paragraph (a) and ''interests'' as described in paragraph (b) of that section.

II. Discussion of Proposed Rule

A. Subpart A—General Provisions

Section 800.104—Applicability Rule

The proposed rule retains paragraph (c) to this section regarding the applicability period for transactions subject to the Pilot Program Interim Rule. The proposed rule adds paragraph (d) to clarify the applicability period of the provisions in the Part 800 Rule in light of the changes proposed in this rule. In particular, paragraph (d) limits the mandatory declaration provision in the Part 800 Rule to certain transactions involving critical technologies and for which specified actions (*e.g.,* execution of a binding written agreement) took place between the Part 800 Rule's effectiveness (February 13, 2020) and the effective date of the rule finalizing this proposed rule. Additionally, the proposed rule adds paragraph (e) setting forth the effective date for the proposed amendments and the new defined terms discussed in this rule, which date will be determined by the time the final rule is published.

For the avoidance of doubt, the result of the applicability rule with the proposed modification will be as follows. The Pilot Program Interim Rule will continue to apply to transactions for which specified actions occurred on or after November 10, 2018, and prior to February 13, 2020, as specified in the regulations at 31 CFR 801.103. The existing critical technology mandatory declaration provision based on NAICS codes and published in the Part 800 Rule will apply to transactions for which specified actions occurred from February 13, 2020, until the effective date of the rule finalizing this proposed rule, as specified in the proposed rule at § 800.104(d). The modifications to the critical technology mandatory declaration provision discussed in this proposed rule would apply—once finalized—starting on the effective date of the final rule, except for certain transactions for which specified actions occurred prior to the effective date of the final rule.

B. Subpart B—Definitions

The proposed rule makes clarifying amendments to § 800.244(b) and (c) and sets forth two new defined terms to be added to subpart B of part 800 as discussed below.

Section 800.244—Substantial Interest

With respect to the definition of substantial interest, the proposed rule adds language to § 800.244(b) to clarify that it applies only where the general partner, managing member, or equivalent primarily directs, controls, or coordinates the activities of the entity. It also removes three instances of the word ''voting'' from § 800.244(c) in order to clarify that paragraph (c) applies not only to § 800.244(a) but also to § 800.244(b).

Section 800.254—U.S. Regulatory Authorization

The proposed rule introduces the term and a definition of ''U.S. regulatory authorization'' to specify the types of regulatory licenses or authorizations that are required under the four main U.S. export control regimes, which if applicable in the context of a particular transaction described under the proposed rule, would trigger a mandatory declaration. With respect to the International Traffic in Arms Regulations (ITAR) administered by the Department of State, this includes licenses and other approvals (*e.g.,* approved technical assistance agreements or manufacturing license agreements) required by the Directorate of Defense Trade Controls for defense articles or defense services on the United States Munitions List. With respect to the Export Administration Regulations (EAR) administered by the Department of Commerce, this includes licenses required for certain items on the Commerce Control List as identified in the Part 800 Rule at § 800.215(b). With respect to the regulations administered by the Department of Energy at 10 CFR part 810, this includes specific or general authorizations required under such regulations, except the general authorization at 10 CFR 810.6(a) for the export of certain controlled nuclear technology to specified countries or entities. Finally, with respect to the regulations administered by the Nuclear Regulatory Commission at 10 CFR part 110, this includes any specific license required under such regulations.

Section 800.256—Voting Interest for Purposes of Critical Technology Mandatory Declarations

The proposed rule introduces the term and provides a definition of ''voting interest for purposes of critical technology mandatory declarations.'' This term is used in the proposed language at § 800.401(c)(1)(v) to specify which persons in the ownership chain of foreign persons described in paragraphs (c)(1)(i) to (iv) of that section should be analyzed for export licenses and authorization purposes in determining whether a particular transaction could trigger a mandatory declaration. In seeking to set clear criteria with respect to the foreign persons that need to be analyzed under this provision, the definition establishes a threshold of a 25 percent voting interest, direct or indirect. For entities whose activities are primarily directed, controlled, or coordinated by or on behalf of a general partner, managing member, or equivalent, the applicable threshold is a 25 percent interest in an entity's general partner, managing member, or equivalent. For purposes of determining the percentage of interest held indirectly by one person in another, the rule establishes that any interest of a parent entity in a subsidiary entity will be deemed to be a 100 percent interest. This approach to determining the percentage of interest is consistent with the proposed amendments to the definition of substantial interest at § 800.244(c), discussed above. Finally, the proposed rule specifies when the ownership interests of separate foreign persons will be aggregated for the purposes of § 800.256.

C. Subpart D—Declarations

The proposed rule modifies § 800.401(c), (e)(6) and (j), and also removes appendix B to the Part 800 Rule, to re-scope the mandatory

declarations for transactions involving U.S. businesses with critical technologies. Thus, transaction parties would no longer need to consider whether the U.S. business produces, designs, tests, manufactures, fabricates, or develops a critical technology utilized in connection with the U.S. business' activity in, or designed by the U.S. business for use in, one or more industries identified by reference to NAICS codes. Instead, mandatory declarations apply only to the extent that the critical technologies that the U.S. business produces, designs, tests, manufactures, fabricates, or develops would require a U.S. regulatory authorization to export, re-export, transfer (in-country), or retransfer to the foreign persons involved in the transaction or certain foreign persons in the ownership chain as specified in § 800.401(c)(1)(i)–(v).

The proposed language at § 800.401(c)(2) further clarifies the analysis required under § 800.401(c)(1). In particular, it makes clear that, except for certain EAR license exceptions specified at § 800.401(e)(6), which are discussed below, a U.S. regulatory authorization is considered to be required even though a license exception or exemption may be available under the EAR or ITAR, respectively. It also specifies how to analyze a foreign investor's nationality for purposes of this provision. Finally, in cases where the applicable U.S. regulatory authorization is tied to the ''end user'' status of the person receiving the critical technology, the proposed language at § 800.401(c)(2)(iii) specifies that for purposes of this analysis, the foreign person(s) specified in § 800.401(c)(1)(i)–(v) should be considered the end user(s).

The proposed rule retains the exceptions in the Part 800 Rule at § 800.401(e)(1) to (5) and revises the exception at paragraph (e)(6). In particular, the proposed rule modifies the description of the EAR license exception for encryption commodities, software, and technology (ENC) to specify that only subpart (b) of EAR license exception ENC is relevant for purposes of the paragraph (e)(6) exception to mandatory declarations for critical technology transactions. The scope of that exception is narrowed in the proposed rule in order to provide clarity regarding the applicability of certain subparts of that exception in the context of mandatory declarations. It also adds two more license exceptions under the EAR to paragraph (e)(6): Technology and software-unrestricted (TSU) and certain elements of strategic trade authorization (STA). Note, however, that for any of the aforementioned license exceptions to relieve the declaration requirement with respect to a foreign person, such foreign person must in fact be eligible to utilize the license exception (including based on end user status, if relevant). These EAR license exceptions were selected for inclusion at paragraph (e)(6) based on national security considerations. CFIUS also notes that the restrictions on the use of all license exceptions found in 15 CFR 740.2 would apply and must also be considered.

The proposed rule also updates the examples at § 800.401(j) to reflect the aforementioned revisions to § 800.401(c). No changes were made to § 800.403 regarding procedures for declarations or to § 800.404 regarding contents of declarations. Finally, for the avoidance of doubt, pursuant to FIRRMA, the mandatory declaration provision at § 800.401(c) applies only to critical technology businesses under § 800.248(a), not to businesses that are TID U.S. businesses solely under § 800.248(b) or (c).

III. Rulemaking Requirements

Executive Order 12866

These regulations are not subject to the general requirements of Executive Order 12866, which covers review of regulations by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB), because they relate to a foreign affairs function of the United States, pursuant to section 3(d)(2) of that order. In addition, these regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to section 7(c) of the April 11, 2018, Memorandum of Agreement between the Treasury Department and OMB, which states that CFIUS regulations are not subject to OMB's standard centralized review process under Executive Order 12866.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has previously been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d), PRA), and approved under OMB Control Number 1505–0121. Under the PRA, 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 OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* RFA) generally requires an agency to prepare a regulatory flexibility analysis unless the agency certifies that the rule will not, once implemented, have a significant economic impact on a substantial number of small entities. The RFA applies whenever an agency is required to publish a general notice of proposed rulemaking under section 553(b) of the Administrative Procedure Act (5 U.S.C. 553, APA), or any other law. As set forth below, because regulations issued pursuant to the DPA, such as these regulations, are not subject to the APA or another law requiring the publication of a general notice of proposed rulemaking, the RFA does not apply.

The proposed rule implements section 721 of the DPA. Section 709(a) of the DPA provides that the regulations issued under it are not subject to the rulemaking requirements of the APA. Section 709(b)(1) instead provides that any regulation issued under the DPA be published in the **Federal Register** and opportunity for public comment be provided for not less than 30 days. Section 709(b)(3) of the DPA also provides that all comments received during the public comment period be considered and the publication of the final regulation contain written responses to such comments. Consistent with the plain text of the DPA, legislative history confirms that Congress intended that regulations under the DPA be exempt from the notice and comment provisions of the APA and instead provided that the agency include a statement that interested parties were consulted in the formulation of the final regulation. See H.R. Conf. Rep. No. 102–1028, at 42 (1992) and H.R. Rep. No. 102–208 pt. 1, at 28 (1991). The limited public participation procedures described in the DPA do not require a general notice of proposed rulemaking as set forth in the RFA. Further, the mechanisms for publication and public participation are sufficiently different to distinguish the DPA procedures from a rule that requires a general notice of proposed rulemaking. In providing the President with expanded authority to suspend or prohibit the acquisition, merger, or takeover of, or certain other investments in, a U.S. business by a foreign person if such a transaction would threaten to impair the national security of the United States, Congress could not have contemplated that regulations implementing such authority would be subject to RFA analysis. For these

reasons, the RFA does not apply to these regulations.

Regardless of whether the RFA applies, available data does not suggest that the proposed rule, if implemented, will have a significant economic impact on a substantial number of small entities. For purposes of the RFA, a ''small entity'' is (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. 5 U.S.C. 601(3)–(6). This proposed rule would affect certain U.S. businesses that have particular activities involving critical technologies and that receive foreign investment (direct or indirect) of the type described in the proposed rule. These U.S. businesses could be found across a range of industries. Accordingly, because SBA size standards are designated by industry, and not all U.S. businesses that constitute small entities within a particular industry will be affected, it is difficult to apply the SBA size standards to determine how many small entities will be affected by this proposed rule. Additionally, some of these U.S. businesses are already subject to a declaration requirement when they receive foreign investment (direct or indirect) under the existing Part 800 Rule.

The Treasury Department considered the data on new foreign direct investment in the United States that is collected annually by the Bureau of Economic Analysis (BEA) within the Department of Commerce through its Survey of New Foreign Direct Investment in the United States (Form BE–13). While these data are self-reported, and include only direct investments in U.S. businesses in which the foreign person acquires at least 10 percent of the voting shares (and consequently, do not capture investments below 10 percent, which may nevertheless be covered transactions), they nonetheless provide relevant information on a category of U.S. businesses that receive foreign investment, some of which may be covered by the proposed rule.

According to the BEA, in 2018, the most current year for which data is available, foreign persons obtained at least a 10 percent voting share in 832 U.S. businesses. See U.S. Bureau of Economic Analysis, ''Number of Investments Initiated in 2018, Distribution of Planned Total Expenditures, Size by Type of Investment,'' available at *https://apps.bea.gov/international/xls/Table15-14-15-16-17-18.xls* (last visited May 6, 2020). The BEA reports only the general size of the investment transaction, not the type of the U.S. business involved, nor whether the U.S. business is considered a ''small business'' by the SBA. The smallest foreign investment transactions that the BEA reports are those with a dollar value below $50,000,000. While not all U.S. businesses receiving a foreign investment of less than $50,000,000 are considered ''small'' for the purposes of the RFA, many might be, and the number of U.S. businesses receiving foreign investments of less than $50,000,000 is the best available information to estimate the number of transactions involving small U.S. businesses that might be subject to CFIUS's jurisdiction and affected by the proposed rule.

Of the above mentioned 832 U.S. businesses receiving foreign investment in 2018, 576 were involved in transactions valued at less than $50,000,000. Although this figure is under inclusive because it does not capture all transactions that could be subject to a filing requirement pursuant to the proposed rule, it also is over inclusive because it is not limited to any particular type of U.S. business. The Treasury Department believes the figure of 576 is the best estimate based on the available data of the number of small U.S. businesses that may be impacted by this proposed rule, although the Treasury Department recognizes the limitations of this estimate.

Even if a substantial number of small entities were affected, the economic impact of the proposed rule on small U.S. businesses will not be significant. First, a portion of the U.S. businesses affected by the proposed rule are already subject to the existing declaration requirement under the Part 800 Rule. Second, the proposed rule replaces the analysis and nexus to NAICS codes with an analysis of export control authorization requirements. U.S. businesses with critical technologies are already aware, or should be aware, of the application of export controls to their items and regularly analyze export authorization requirements particularly when considering a foreign investment. The process of completing the declaration form under the proposed rule is no different from the existing Part 800 Rule. Accordingly, the proposed revisions to the Part 800 rule are not expected to change the general burden hour estimate for analyzing a transaction and preparing a declaration.

For the reasons stated above, the Secretary of the Treasury certifies that the proposed rule, if implemented, will not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). Nevertheless, the Treasury Department is interested in any comments on how the proposed rule would affect small entities.

List of Subjects in 31 CFR Part 800

Foreign investments in the United States, Investigations, Investments, Investment companies, National defense, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, the Treasury Department proposes to amend part 800 of title 31 of the Code of Federal Regulations, to read as follows:

PART 800—REGULATIONS PERTAINING TO CERTAIN INVESTMENTS IN THE UNITED STATES BY FOREIGN PERSONS

■ 1. The authority citation for part 800 continues to read:

Authority: 50 U.S.C. 4565; E.O. 11858, as amended, 73 FR 4677.

Subpart A—General Provisions

■ 2. Amend § 800.104 by revising paragraph (a) and adding paragraphs (d) and (e) to read as follows:

§ 800.104 Applicability Rule.

(a) Except as provided in paragraphs (b) through (e) of this section and otherwise in this part, the regulations in this part apply from February 13, 2020.

* * * * *

(d) Subject to paragraphs (b) and (c) of this section, for any transaction for which the following has occurred on or after February 13, 2020, and before [EFFECTIVE DATE OF FINAL RULE], the corresponding provisions of the regulations in this part that were in effect during that time will apply:

(1) The completion date;

(2) The parties to the transaction have executed a binding written agreement, or other binding document, establishing the material terms of the transaction;

(3) A party has made a public offer to shareholders to buy shares of a U.S. business; or

(4) A shareholder has solicited proxies in connection with an election of the board of directors of a U.S. business or an owner or holder of a contingent equity interest has requested the conversion of the contingent equity interest.

(e) Except as provided in paragraphs (b) through (d) of this section, the amendments to this part published in the **Federal Register** on [DATE OF PUBLICATION OF FINAL RULE] apply

from [EFFECTIVE DATE OF FINAL RULE].

Subpart B—Definitions

■ 3. Amend § 800.244 by revising paragraphs (b) and (c) to read as follows:

§ 800.244 Substantial interest.

* * * * *

(b) In the case of an entity whose activities are primarily directed, controlled, or coordinated by or on behalf of a general partner, managing member, or equivalent, the national or subnational governments of a single foreign state will be considered to have a *substantial interest* in such entity only if they hold 49 percent or more of the interest in the general partner, managing member, or equivalent of the entity.

(c) For purposes of determining the percentage of interest held indirectly by one entity in another entity under this section, any interest of a parent will be deemed to be a 100 percent interest in any entity of which it is a parent.

* * * * *

■ 4. Redesignate § 800.254 as § 800.255 and add a new § 800.254 to read as follows:

§ 800.254 U.S. regulatory authorization.

The term *U.S. regulatory authorization* means:

(a) A license or other approval issued by the Department of State under the ITAR;

(b) A license from the Department of Commerce under the EAR;

(c) A specific or general authorization from the Department of Energy under the regulations governing assistance to foreign atomic energy activities at 10 CFR part 810 other than the general authorization described in 10 CFR 810.6(a); or

(d) A specific license from the Nuclear Regulatory Commission under the regulations governing the export or import of nuclear equipment and material at 10 CFR part 110.

■ 5. Add § 800.256 to read as follows:

§ 800.256 Voting interest for purposes of critical technology mandatory declarations.

(a) The term *voting interest for purposes of critical technology mandatory declarations* means, in the context of an interest in a foreign person for the purposes of § 800.401(c)(1)(v), a voting interest, direct or indirect, of 25 percent or more, subject to paragraphs (b) and (c) of this section.

(b) In the case of a foreign person that is an entity whose activities are primarily directed, controlled, or coordinated by or on behalf of a general partner, managing member, or equivalent, a foreign person will be considered to have a *voting interest for purposes of critical technology mandatory declarations* in such entity only if it holds 25 percent or more of the interest in the general partner, managing member, or equivalent of the entity.

(c) For purposes of determining the percentage of *voting interest for purposes of critical technology mandatory declarations* held indirectly by one person in another, any interest of a parent will be deemed to be a 100 percent interest in any entity of which it is a parent.

(d) For purposes of § 800.401(c)(1)(v), foreign persons who are related, have formal or informal arrangements to act in concert, or are agencies or instrumentalities of, or controlled by, the national or subnational governments of a single foreign state are considered part of a group of foreign persons and their individual holdings are aggregated.

Subpart D—Declarations

■ 7. Amend § 800.401 by revising paragraphs (c), (e)(6), and (j) to read as follows:

§ 800.401 Mandatory declarations.

* * * * *

(c)(1) A covered transaction involving a TID U.S. business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies for which a U.S. regulatory authorization would be required for the export, re-export, transfer (in-country), or retransfer of such critical technology to a foreign person that is a party to the covered transaction and such foreign person:

(i) Could directly control such TID U.S. business as a result of the covered transaction;

(ii) Is directly acquiring an interest that is a covered investment in such TID U.S. business;

(iii) Has a direct investment in such TID U.S. business, the rights of such foreign person with respect to such TID U.S. business are changing, and such change in rights could result in a covered control transaction or a covered investment;

(iv) Is a party to any transaction, transfer, agreement, or arrangement described in § 800.213(d) with respect to such TID U.S. business; or

(v) Individually holds, or is part of a group of foreign persons that, in the aggregate, holds, a voting interest for purposes of critical technology mandatory declarations in a foreign person described in paragraphs (c)(1)(i) through (iv) of this section.

(2) For purposes of paragraph (c)(1) of this section, whether a U.S. regulatory authorization would be required for the export, re-export, transfer (in-country), or retransfer of a critical technology to a foreign person described in paragraphs (c)(1)(i) through (v) of this section shall be determined:

(i) Without giving effect to any license exemption available under the ITAR or license exception available under the EAR except as described paragraph in (e)(6) of this section;

(ii) Based on such foreign person's principal place of business (for entities) as defined in § 800.239, or such foreign person's nationality or nationalities (for individuals) under the relevant U.S. regulatory authorization, as applicable; and

(iii) As if such foreign person is an ''end user'' under the applicable U.S. regulatory authorization, as applicable.

* * * * *

(e) * * *

(6) A covered transaction that requires one or more U.S. regulatory authorizations and each of which is satisfied by the foreign person's eligibility for a license exception under the EAR at 15 CFR 740.13, 740.17(b), or 740.20(c)(1), as applicable.

* * * * *

(j) Examples:

(1) *Example 1.* Corporation A, an entity located in Country F with 75 percent of its voting interest owned by nationals of Country F, acquires 100 percent of the interests of Corporation Y, a U.S. business that manufactures a critical technology controlled under the EAR. A national of Country G owns 25 percent of the voting shares of Corporation A. Under the EAR, a license is required to export the critical technology to Country G but not Country F. Assuming no other relevant facts, the acquisition of Corporation Y is subject to a mandatory declaration.

(2) *Example 2.* Corporation B, an entity with its principal place of business in Country G and wholly owned by nationals of Country G, makes a covered investment in Corporation Z, a U.S. business that designs a critical technology controlled under the EAR. Under the EAR, a license is required to export the critical technology to Country G. The license exception at 15 CFR 740.4 authorizes Corporation B to export the critical technology to Country G without a license. Assuming no other relevant facts, the covered investment is subject to a mandatory declaration.

(3) *Example 3.* Same facts as the example in paragraph (j)(2) of this section, except that the license exception at 15 CFR 740.20(c)(1) authorizes Corporation B to export the critical technology to Country G without

a license. Assuming no other relevant facts, the covered investment is not subject to a mandatory declaration.

(4) *Example 4.* Corporation D, a foreign entity with its principal place of business in Country M with 30 percent of its voting shares owned by nationals of Country M, acquires 100 percent of Corporation R, a U.S. business that designs multiple types of critical technology controlled under the EAR and the ITAR. Corporation R manufactures one critical technology that is described on the U.S. Munitions List and requires a license for export to Country M. The remainder of Corporation R's critical technology is controlled under the EAR and does not require a license for export to Country M. Assuming no other relevant facts, Corporation D's acquisition of Corporation R is subject to a mandatory declaration.

(5) *Example 5.* Corporation A, an entity with its principal place of business in Country F with 35 percent of its voting shares owned by nationals of Country F, acquires 100 percent of Corporation Y, a U.S. business that manufactures an item controlled under the ITAR. An ITAR authorization is required to export the item to Corporation A in Country F, but under the ITAR, Corporation Y is authorized under an exemption to export the controlled article to Corporation A in Country F. Assuming no other relevant facts, Corporation A's acquisition of Corporation Y is subject to a mandatory declaration.

Appendix B to Part 800—[Removed]

■ 8. Remove appendix B to part 800.

* * * * *

Dated: May 6, 2020.

Thomas Feddo,

Assistant Secretary for Investment Security.

[FR Doc. 2020–10034 Filed 5–20–20; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51, 54, 61, and 69

[WC Docket No. 20–71; FCC 20–40; FRS 16704]

Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to deregulate and detariff the end user interstate access charges currently included on consumers' and small businesses' local telephone bills. The proposal would also prohibit carriers from separately listing these charges on customers' bills and address issues related to the Universal Service Fund's and other federal programs' historic reliance on these charges in certain circumstances. The need to regulate and tariff those charges is declining as consumers and businesses continue to rapidly migrate away from traditional telephone service provided by local exchange carriers to next-generation voice service options. Detariffing and deregulating these charges will give carriers the flexibility to price their services competitively. Eliminating these charges from consumers' telephone bills will make it easier for consumers to understand their telephone bills, compare prices among voice service providers, and better ensure that a voice service provider's advertised price is closer to the total price that appears on its customers' bills.

DATES: Comments are due on or before July 6, 2020, and reply comments are due on or before August 4, 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 document, you should advise the contact listed in the following as soon as possible.

ADDRESSES: 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 in this document. Comments and reply 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: *https://www.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 hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

If the FCC Headquarters is open to the public, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. The Commission also strongly encourages parties to track the organization set forth in the Further Notice in order to facilitate its internal review process.

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).

FOR FURTHER INFORMATION CONTACT: For further information, please contact Victoria Goldberg, Pricing Policy Division, Wireline Competition Bureau, at *Victoria.goldberg@fcc.gov.* For information regarding the Paperwork Reduction Act (PRA) information requirements contained in this document, contact Nicole Ongele, Office of Managing Director, at (202) 418–2991 or *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (Notice) in WC Docket No. 20–71, adopted March 31, 2020 and released April 1, 2020. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It is available on the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-20-40A1.pdf.*

I. Introduction

1. Twenty-five years ago, consumers made most of their telephone calls from their home phones, their work phones or public payphones—and, in almost all cases, the local telephone company provided the local telephone service. Most of those companies (known as incumbent local exchange carriers) faced little to no competition as a result of state-granted monopolies. It therefore made sense for the Commission to impose pricing regulation and tariffing obligations on the portion of local telephone service used to originate and terminate interstate long-distance calls and for states to impose similar obligations on the intrastate portion of such service. Doing so protected consumers from the monopoly power of the incumbent local exchange carrier and ensured that rates were just and reasonable as required by the Communications Act, 47 U.S.C. 201(b).

2. Today, the communications marketplace is dramatically different. As a result of the Telecommunications Act of 1996, local telephone markets are open to competition. And consumers and businesses continue to rapidly migrate away from traditional telephone service provided by incumbent local exchange carriers to a multitude of voice service options offered by providers of interconnected VoIP service, mobile and fixed wireless services, and over-the-top voice applications. In light of the sweeping changes in the competitive landscape for voice services, many states have begun to deregulate the intrastate portion of local telephone service provided by incumbent local exchange carriers.

3. And yet, the Commission continues to regulate the various end-user charges associated with interstate access service offered by incumbent local exchange carriers—''Telephone Access Charges'' for short. In addition to remaining subject to federal price regulation and complicated federal tariffing requirements, these Telephone Access Charges are difficult to understand, and the opaque way they are sometimes described on telephone bills reduces consumers' ability to compare the cost of different voice service offerings.

4. Significant marketplace and regulatory changes over the past two-plus decades call into question whether ex ante price regulation and tariffing of Telephone Access Charges remain in the public interest. Consistent with the Commission's commitment to eliminate outdated and unnecessary regulations and to encourage efficient competition, this Notice proposes to deregulate and detariff these charges, which represent the last handful of interstate end-user charges that remain subject to regulation. In the interest of enabling consumers to easily compare voice service offerings by different providers, the Commission also proposes to prohibit all carriers from separately listing Telephone Access Charges on customers' bills. Doing so should help ensure that a voice service provider's advertised price is closer to the total price that appears on its customers' bills.

II. Background

A. Currently Tariffed Telephone Access Charges

5. Section 203 of the Communications Act of 1934, 47 U.S.C. 203, as amended (the Act), requires that common carriers file tariffs or ''schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier . . . and showing the classifications, practices, and regulations affecting such charges.'' Commission rules currently include five tariffed Telephone Access Charges: the Subscriber Line Charge, the Access Recovery Charge, the Presubscribed Interexchange Carrier Charge, the Line Port Charge, and the Special Access Surcharge, 47 CFR 51.915(e), 51.917(e), 69.115, 69.152, 69.153, 69.157.

6. *The Subscriber Line Charge.* The Subscriber Line Charge was the product of the Commission's decision in 1983 to establish a formal system of tariffed charges governing intercarrier compensation. That system originally required long-distance companies (known as interexchange carriers) to pay local exchange carriers for originating and terminating long-distance calls. Those intercarrier charges did not, however, recover the entire cost of the local loop—the connection between an end user and its local exchange carrier. Instead, the Commission created the Subscriber Line Charge as the mechanism through which local exchange carriers recover a portion of the costs of their local loops through a flat per-line fee assessed on end users. The Commission adopted a flat per-line fee because the local exchange carrier's cost of providing the local loop is not traffic-sensitive. In other words, the costs of providing the local loop do not vary with the amount of traffic carried over the loop. The Commission found that requiring carriers to recover non-traffic sensitive costs through flat fees would ensure that rates were ''just and reasonable'' as required by the Act. Recovering the entire cost of the loop from end users, however, raised the concern that customers in high-cost areas would see a sudden increase in rates. The Commission therefore capped Subscriber Line Charges and required carriers to recover the remaining common line costs through a per-minute Carrier Common Line charge assessed on interexchange carriers. For price cap local exchange carriers, there are three categories of caps on the Subscriber Line Charge: A primary residential or single-line business cap, a non-primary residential cap, and a multi-line business cap, 47 CFR 69.152. For rate-of-return local exchange carriers, there are two such categories: a residential or single-line business cap and a multi-line business cap, 47 CFR 69.104.

7. In 1996, the Commission began reform of interstate access charges to align the access rate structure more closely with the manner in which costs are incurred. At the same time, the Commission developed a federal high-cost universal service support mechanism to make explicit subsidies that had been implicitly included in interstate access service charges. As part of that order and subsequent reforms, the Commission increased the Subscriber Line Charge caps for price cap carriers as follows:

- $6.50 for primary residential and single-line business lines;
- $7.00 for non-primary residential lines; and
- $9.20 per line for multi-line business lines.

47 CFR 69.152(d), (e), (k). The Commission then amended the interstate access charge system for rate-of-return carriers, increasing the Subscriber Line Charge caps to the levels established for price cap carriers.

8. The Commission does not regulate the end-user charges of competitive local exchange carriers because it has found that competitive local exchange carriers generally lack market power in the provision of telecommunications service. Thus, competitive local exchange carriers are free to build into their end-user rates for voice service any charge, including an amount equivalent to the incumbent local exchange carriers' Subscriber Line Charge, subject only to the general requirement that their rates be just and reasonable, 47 U.S.C. 201(b).

9. *The Access Recovery Charge.* The Commission created the Access Recovery Charge in 2011 as part of new rules requiring local exchange carriers to reduce, over a period of years, many of their switched access charges

assessed on interexchange carriers, with the ultimate goal of transitioning intercarrier compensation to a bill-and-keep regime. The Commission adopted a transitional recovery mechanism to mitigate the impact of reduced intercarrier compensation revenues on incumbent local exchange carriers and to facilitate continued investment in broadband-capable infrastructure. The Commission defined a portion of the revenues that incumbent local exchange carriers lost due to reduced access charges as ''Eligible Recovery'' and allowed eligible carriers to use a combination of a new limited end-user charge—known as the Access Recovery Charge—and universal service support (known as CAF Intercarrier Compensation or CAF ICC) to recover their Eligible Recovery.

10. Incumbent local exchange carriers may assess an Access Recovery Charge on customers in the form of a monthly fixed charge. To ensure that any increases to the Access Recovery Charge would not adversely impact service affordability, the Commission limited annual increases of the Access Recovery Charge to $0.50 per month for residential and single-line businesses and $1.00 per month for multiline businesses. In addition, residential and single-line business Access Recovery Charges cannot exceed $2.50 per line per month for price cap carriers and $3.00 per line per month for rate-of-return carriers. Access Recovery Charges for multi-line businesses are capped at $5.00 per line per month for price cap carriers and $6.00 per line per month for rate-of-return carriers. In addition, the multi-line business Access Recovery Charge plus the Subscriber Line Charge may not exceed $12.20 per line per month, 47 CFR 51.915(e), 51.917(e).

11. The Commission adopted these caps to fairly balance recovery across all end users, to protect customers from carriers imposing excessive Access Recovery Charges, and to ensure that the total rates that multi-line businesses pay for Subscriber Line Charge and Access Recovery Charge line items remain just and reasonable. The Access Recovery Charge is tariffed separately from the Subscriber Line Charge but may be combined with the Subscriber Line Charge on bills to customers.

12. Carriers that choose not to impose the maximum Access Recovery Charge on their end users must still impute the full Access Recovery Charge revenue they are permitted to collect for purposes of calculating CAF ICC support. In addition, rate-of-return carriers offering consumer broadband-only lines must impute an Access Recovery Charge amount equal to the amount that would have been assessed on a voice or voice-data line in calculating CAF ICC support.

13. In the USF/ICC Transformation Order, the Commission established a sunset date for price cap carriers' CAF ICC Support. Specifically, as of July 1, 2019, a price cap carrier unable to recover its entire Eligible Recovery through Access Recovery Charges was no longer permitted to recover the remainder of its eligible support through CAF ICC support 47 CFR 51.915(f)(5). Price cap carriers can continue to calculate their Eligible Recovery, pursuant to the Commission's rules, and to assess Access Recovery Charges on their end users to recover as much of their Eligible Recovery as they can, subject to the caps on the Access Recovery Charge. There is no sunset date for rate-of-return carriers' CAF ICC support.

14. *The Presubscribed Interexchange Carrier Charge.* Price cap carriers may assess a monthly flat-rate charge on the presubscribed interexchange carrier—the long-distance carrier to which the calls are routed by default—of a multi-line business subscriber. Created in 1997, the charge recovers a portion of the common line costs not recovered by the Subscriber Line Charge. The Presubscribed Interexchange Carrier Charge is capped and has largely been phased out. When a multi-line business customer does not presubscribe to a long-distance carrier, the Commission's rules allow the price cap carrier to assess the Presubscribed Interexchange Carrier Charge on the end-user customer directly, 47 CFR 69.153.

15. *The Line Port Charge.* A local switch consists of (1) an analog or digital switching system, and (2) line and trunk cards. Line ports connect subscriber lines to the switch in the local exchange carrier's central office. The costs associated with line ports include the line card, protector, and main distribution frame. The Line Port Charge is a monthly end-user charge that recovers costs associated with digital lines, such as integrated services digital network (ISDN) line ports, to the extent those port costs exceed the costs for a line port used for basic, analog service, 47 CFR 69.130, 69.157. The Line Port Charge was established for price cap carriers in 1997 and for rate-of-return carriers in 2001.

16. *The Special Access Surcharge.* Established in 1983, the $25 per month Special Access Surcharge is assessed on trunks that could ''leak'' traffic into the public switched network in order to address the problem of a ''leaky private branch exchange (PBX), 47 CFR 69.5(c), 69.115.'' The ''leaky PBX'' problem can arise where large end users that employ multiple PBXs in multiple locations lease private lines to connect their various PBXs. Although these lines were intended to permit employees of large business end users to communicate between locations without incurring access charges, some large end users permitted long-distance calls to leak from the PBX into the local public network, where they were terminated without incurring access charges. The assessed amount currently constitutes only a de minimis portion of revenues for most carriers.

B. Universal Service Rules Related to Telephone Access Charges

17. *The Reasonable Comparability Benchmark.* Section 254(b) of the Act, 47 U.S.C. 254(b)(3), provides that ''[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.'' Consistent with this principle, the Commission requires certain carriers receiving high cost universal service support, known as Eligible Telecommunications Carriers, to ''offer voice telephony as a standalone service throughout their designated service area . . . at rates that are reasonably comparable to urban rates'' as a ''condition of receiving support,'' 47 CFR 54.201. Rates for voice services are ''reasonably comparable'' to urban rates when they are within two standard deviations of the ''national average urban rate for voice service,'' 47 CFR 54.313(a)(2). The Wireline Competition Bureau publishes an updated reasonable comparability benchmark annually.

18. *Telephone Access Charges Used To Calculate Universal Service Fund (USF) Support.* Revenues from some Telephone Access Charges are used in the computation of USF support for rate-of-return carriers. Specifically, the Subscriber Line Charge, Line Port Charge, and Special Access Surcharge revenues are subtracted from a carrier's common line revenue requirement to determine the amount of Connect America Fund Broadband Loop Support (CAF BLS) a carrier is entitled to receive, 47 CFR 54.901. The Access Recovery Charge is subtracted from the Eligible Recovery to determine the amount of CAFICC support a rate-of-return carrier is entitled to receive.

19. CAF BLS support is the successor to Interstate Common Line Support, which was created by the Commission in 2001 to allow rate-of-return carriers to recover from the USF any shortfall between their allowed Subscriber Line

Charge and their allowed common line revenue requirement. If a rate-of-return carrier charged a Subscriber Line Charge that was less than the full amount it was permitted to charge, the carrier had to impute the maximum allowed Subscriber Line Charge in calculating its Interstate Common Line Support. In 2016, the Commission revised its Interstate Common Line Support rules to include support for consumer broadband-only loops and renamed it CAF BLS, but the relationship between the Subscriber Line Charge, common line expenses, and the support mechanism remains the same.

20. In 2011, the Commission adopted a Residential Rate Ceiling of $30 per month (*i.e.,* the total rate for basic local telephone phone service, including any additional charges, that a customer actually pays each month) to ensure that local telephone service remains affordable and set at reasonable levels. The Commission's rules currently prohibit an incumbent local exchange carrier from assessing an Access Recovery Charge on residential customers that would cause the carrier's total charges to exceed the Residential Rate Ceiling, 47 CFR 51.915(b)(11)–(12). A rate-of-return carrier can, however, recover through CAF ICC, the amount of Eligible Recovery that it is not permitted to recover through its Access Recovery Charges due to the Residential Rate Ceiling.

21. *Role of Telephone Access Charges in USF Contributions.* Section 254(d) of the Act, 47 U.S.C. 254(d), specifies that ''[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the . . . mechanisms established by the Commission to preserve and advance universal service,'' and that ''[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.'' Pursuant to that provision, the Commission requires all ''[e]ntities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee,'' to contribute to the federal USF based on their interstate and international end-user telecommunications revenues. The Commission requires interconnected Voice over internet Protocol (VoIP) service providers to contribute as a means of ensuring a level playing field among direct competitors, 47 CFR 54.706, 54.708.

22. Contributions to the Fund are based upon a percentage of contributors' interstate and international end-user telecommunications revenues. This percentage is called the contribution factor. The Commission calculates the quarterly contribution factor based on the ratio of total projected quarterly costs of the universal service support mechanisms to contributors' total projected quarterly collected end-user interstate and international telecommunications revenues, net of projected contributions, 47 CFR 54.709(a)(2). Telephone Access Charges are assessable revenue for federal USF contribution purposes, 47 CFR 54.709(a)(2).

23. As discussed, the Commission does not regulate how competitive local exchange carriers recover their costs of providing interstate access service from their end-user customers. To the extent that a competitive local exchange carrier chooses to assess a separate interstate end-user access charge on its customers, it is required to report such revenues for USF contribution purposes in a manner that is consistent with its supporting books of account and records.

24. For providers of voice services that are not able to easily determine the jurisdictional nature of their traffic, the Commission created different USF contribution safe harbors for different types of providers. Wireless providers, for example, are considered in compliance with the Commission's USF contributions requirements if they treat 37.1% of their telecommunications revenue as assessable for purposes of determining their federal USF contributions. Interconnected VoIP service providers are considered to be in compliance with the Commission's USF contributions requirements if they treat 64.9% of their total revenue as assessable for purposes of determining their federal USF contributions.

C. The Commission's Truth-in-Billing Rules

25. The Commission has long sought to make telephone bills more understandable for consumers. Indeed, the Commission currently has two open rulemaking proceedings in which the Commission is considering, among other things, whether government-mandated charges should be separate from other charges on customers' telephone bills, and whether to apply the Commission's truth-in-billing rules to interconnected VoIP services.

26. In order to assist consumers in understanding their phone bills, the Commission has posted on its website consumer education material explaining the various charges consumers are likely to find on such bills. As described in the Commission's consumer education materials, a typical phone bill includes a ''base'' charge for local service; line items for local, state, and federal taxes; additional charges to pay for 911 services, federal USF, and Local Number Portability Administration; the Subscriber Line Charge; and various other charges.

27. The Commission has held that the prohibition on carriers engaging in unjust and unreasonable practices in section 201(b) of the Act, 47 U.S.C. 201(b) prohibits carriers from including misleading information on telephone bills, but does not require all carriers to use the same descriptions for the various types of charges found on telephone bills. Recognizing that there are ''many ways to convey important information to consumers in a clear and accurate manner'' the Commission has declined to prescribe specific descriptions for charges typically found on telephone bills. As a result, carriers use different descriptions for these charges.

28. For example, different carriers' bills describe the Subscriber Line Charges as ''FCC-Approved Customer Line Charge,'' ''FCC Subscriber Line Charge,'' ''Customer Subscriber Line Charge,'' ''Easy Access Dialing Fee,'' and ''Federal Line Fee.'' What is more, although the Commission has directed carriers to list the Subscriber Line Charge as a line-item charge on customers' telephone bills, it also specified in 2011 that the Access Recovery Charge may be combined in a single line item with the Subscriber Line Charge on the bill. As a result, some phone bills may have a single line item combining the two charges and other phone bills may break them out separately.

D. The Commission's Detariffing Authority

29. The Telecommunications Act of 1996 was adopted to ''promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers,'' 47 U.S.C. 151. In implementing this legislation, the Commission noted the pro-competitive, deregulatory goals of the Act and its directive to remove ''statutory and regulatory impediments to competition.''

30. Consistent with these objectives, the 1996 Act granted the Commission authority to forbear from statutory provisions and regulations that are no longer ''current and necessary in light of changes in the industry.'' More specifically, under section 10 of the Act, 47 U.S.C. 160, the Commission is required to forbear from any statutory provision or regulation if it determines

that: (1) Enforcement of the provision or regulation is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just, reasonable, and not unjustly or unreasonably discriminatory; (2) enforcement of the provision or regulation is not necessary to protect consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.

31. Over the last two decades, the Commission has repeatedly relied on its section 10 authority to forbear from applying section 203's tariffing requirements when competitive developments made such requirements unnecessary and even counterproductive. Shortly after Congress enacted section 10, the Commission forbore from section 203 tariffing requirements for domestic long-distance services provided by non-dominant carriers. The Commission found that market forces would generally ensure that the rates, practices, and classifications of nondominant interexchange carriers for interstate, domestic, interexchange services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission also found that tariff filings by non-dominant interexchange carriers for long distance services were not necessary to protect consumers. Instead, the Commission found that market forces, the section 208 complaint process, and the Commission's ability to reimpose tariff requirements, if necessary, were sufficient to protect consumers. The Commission further found that detariffing of non-dominant domestic long distance services was in the public interest because it would further the pro-competitive, deregulatory objectives of the 1996 Act by fostering increased competition in the market for interstate, domestic, interexchange telecommunications services.

32. Beginning in 2007, the Commission granted forbearance from dominant carrier regulation, including tariffing and price regulation, to a number of price cap incumbent local exchange carriers for their newer packet-based broadband services. In the case of AT&T, for example, the Commission found that a number of entities provided, or were ready to provide, broadband services in competition with AT&T's broadband services. Given the level of competition, the Commission concluded that dominant carrier tariffing and pricing regulation was not necessary to ensure that AT&T's rates and practices for those services remained just, reasonable, and not unjustly or unreasonably discriminatory. The Commission found that, under these circumstances, the benefits of tariffing requirements to ensuring just, reasonable, and nondiscriminatory charges and practices, were negligible. The Commission explained that continuing to apply dominant carrier tariff regulation was not in the public interest because it would create market inefficiencies, inhibit carriers from responding quickly to rivals' new offerings, and impose other unnecessary costs.

33. More recently, in the 2017 Price Cap BDS Order, the Commission found, among other things, that competition was sufficiently pervasive to justify granting all price cap carriers forbearance from tariffing of their packet-based business data services and time division multiplexing (TDM)-based business data services above a DS3 bandwidth level. The Commission also adopted a competitive market test to determine where there was sufficient competitive pressure on lower speed (DS3 and below) TDM-based end user channel termination services to justify forbearance from tariffing requirements for those services, 47 CFR 69.803(a), 69.807(a). The Commission found that application of section 203's tariffing requirements was not necessary because competition and remaining statutory and regulatory requirements were sufficient to ensure ''just and reasonable rates, terms, and conditions'' that are not ''unjustly or unreasonably discriminatory.'' The Commission further found that by ensuring regulatory parity and promoting competition and broadband deployment, detariffing these services met the requirements of section 10(a)(3). On partial remand of the Price Cap BDS Order, the Commission similarly found that competition for lower speed TDM transport business data services in price cap areas was sufficiently widespread to justify granting price cap carriers forbearance from tariffing these services.

34. In 2018, the Commission relied on its section 10 forbearance authority to detariff certain business data services provided by rate-of-return carriers receiving fixed or model-based universal service support. In the Rate-of-Return BDS Order, the Commission adopted a voluntary path by which rate-of-return carriers that receive fixed or model-based universal service support could elect to transition their business data service offerings to incentive regulation, 47 CFR 61.50(b). As part of this framework, the Commission granted electing carriers forbearance from section 203 tariffing requirements for packet-based and higher capacity (above DS3) TDM-based business data services. The Commission also detariffed electing carriers' lower capacity (DS3 and below) TDM-based business data services in rate-of-return study areas deemed competitive. The Commission found that forbearance from tariffing these services ''will promote competition, reduce compliance costs, increase investment and innovation, and facilitate the technology transitions.'' Therefore, application of section 203 was not necessary, and forbearance was in the public interest consistent with sections 10(a) and 10(b).

35. Thus, both the statute and longstanding Commission precedent make clear that the Commission can and should forbear from the tariffing requirements of section 203 when there is sufficient competition for a service such that tariffing is not necessary to protect a carrier's customers nor to promote the public interest.

III. Discussion

36. In this Notice, the Commission proposes to eliminate ex ante pricing regulation of all Telephone Access Charges. In addition, the Commission proposes to require incumbent local exchange carriers and competitive local exchange carriers to detariff all such charges. The Commission proposes a nationwide approach based on its review of data demonstrating widespread availability of competitive alternatives for voice services and on other factors that appear to make such regulation and tariffing unnecessary and contrary to the public interest. The Commission seeks comment on this proposal and invites commenters to offer alternative proposals. Further, while the Commission believes those identified charges—the Subscriber Line Charge (also called the End User Common Line charge), Access Recovery Charge, Presubscribed Interexchange Carrier Charge, Line Port Charge, and Special Access Surcharge—are the appropriate focus of its proposals here, the Commission seeks comment on whether there are any other interstate end-user charges for which the Commission should adopt the reforms being considered as part of this proceeding. The Commission also seeks comment on the data it uses and on its analysis of those data and invite commenters to offer additional data and their own analyses.

37. Consistent with the goal of simplifying carriers' advertised rates and customers' bills, the Commission also proposes to prohibit carriers from billing customers for Telephone Access Charges through separate line items on

their bills. Given that some Telephone Access Charges are used to calculate contributions to the USF and other federal programs, as well as high-cost support, the Commission also proposes ways to provide certainty in calculating such contributions and support to ensure stability in funding following pricing deregulation and detariffing of Telephone Access Charges. Finally, the Commission seeks comment on its legal authority to adopt these rule changes and on the costs and benefits of its proposals.

A. The Declining Need for Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges

38. The primary objective of ex ante pricing regulation and tariffing is to ensure that prices are just and reasonable as required by the Act. While such ex ante regulation and tariffing may have been necessary when the incumbent local exchange carriers were dominant suppliers, that no longer appears to be the case. Today, competition for voice services is widespread and the Commission expects it to be more effective than regulation in ensuring that incumbent local exchange carriers' rates for voice services are just and reasonable. The Commission is also concerned that the costs of regulating and tariffing Telephone Access Charges are likely to exceed the benefits, because they impose costs on carriers and hinder carriers' ability to quickly adapt to changing market conditions.

39. The Commission proposes to find that widespread competition among voice services makes ex ante pricing regulation and tariffing of Telephone Access Charges unnecessary to ensure just and reasonable rates or to otherwise protect customers. The Commission seeks comment on its proposal. As the Commission has explained in prior deregulatory decisions, '' 'competition is the most effective means of ensuring that . . . charges, practices, classifications, and regulations . . . are just and reasonable, and not unreasonably discriminatory.' '' When markets become competitive, pricing regulations are not only unnecessary, they are counterproductive.

40. Over the last several decades, local exchange carriers have been quickly losing subscribers while mobile and interconnected VoIP providers have continued gaining subscribers. The Commission's annual Voice Telephone Services Reports show, for example, that from December 2008 to December 2018, the share of total voice subscribers served by incumbent local exchange carriers decreased from 27.9% to only 7.4%. During this same period, the share of total voice subscriptions for interconnected VoIP service providers unaffiliated with an incumbent local exchange carrier more than doubled, from 4.9% to 11.7%. Moreover, in the same period, mobile voice subscriptions increased from 61.7% to 75.9%, and as of the end of 2018, 57.1% of households purchased only wireless voice service.

41. The Commission's data also demonstrate that competitive voice service offerings are available nationwide. More than 99.9% of populated census blocks have one or more facilities-based providers of mobile voice services unaffiliated with an incumbent local exchange carrier deployed in the block. Further, 80.6% of populated census blocks have one or more unaffiliated facilities-based providers of fixed broadband at speeds of 10/1 Mbps or greater deployed in the block. Those fixed broadband technologies include xDSL, fiber, terrestrial fixed wireless, and cable modem, and allow providers to offer voice services and allow customers to use over-the-top VoIP service providers. The Commission believes that the presence of competition in voice services imposes material pricing pressure on incumbent local exchange carriers, rendering ex ante pricing regulation and tariffing of Telephone Access Charges unnecessary to ensure just and reasonable rates. The Commission seeks comment on these data, and on its analysis. The Commission also invites commenters to offer other data sources the Commission should use to examine the extent of competition for voice services.

42. For purposes of these analyses, the Commission defines a ''populated census block'' as any non-water census block with at least one occupied or unoccupied housing unit according to its 2018 ''Staff Block Estimates,'' available at *https://www.fcc.gov/reports-research/data/staff-block-estimates.* The Commission counts wireless voice and fixed broadband service providers affiliated with incumbent local exchange carriers as ''unaffiliated,'' but only outside of the incumbent local exchange carriers' respective study areas. Data on census blocks with mobile voice deployment are publicly available on the Commission website at *https://www.fcc.gov/mobile-deployment-form-477-data* (select ''Dec. 2018'' from the ''Actual Area Methodology'' column). Lists of carriers and affiliates are available at *https://www.fcc.gov/general/form-477-filers-state-0* and *https://www.fcc.gov/document/fcc-proposes-detariffing-access-charges-simplifying-consumer-bills.* Study area data and data regarding the affiliations of incumbent local exchange carriers and wireless voice providers are also available on the Commission website at *https://www.fcc.gov/economics-analytics/industry-analysis-division/study-area-boundary-data* (use ''Census Block—Study Area Cross Reference (ZIP) (Oct 2016)'') and *https://www.fcc.gov/general/fcc-form-477-additional-data* (use ''Form 477 Filers by State (12/08–current)'').

43. Further, this analysis relies on data regarding fixed broadband instead of fixed voice or interconnected VoIP because data regarding fixed broadband is reported at the more granular census-block level. For purposes of this analysis, the Commission limits its consideration of fixed broadband to unaffiliated providers offering service with speeds of at least 10/1 Mbps, which ensures that the broadband deployment measured here represents the availability of next-generation voice services such as interconnected VoIP service. Data on census blocks with fixed broadband deployment are publicly available on the Commission website at *https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477* (select ''Data as of December 31, 2018'').

44. The Commission's proposal to eliminate ex ante pricing regulation and tariffing of Telephone Access Charges is supported by the fact that the prices charged by incumbent local exchange carriers in many of the areas that are least likely to have robust competition are subject to other regulatory constraints. Generally, competition in voice services is least likely to exist in rural areas and other high-cost areas. These areas are usually served by carriers that receive federal high-cost USF support. To receive such support, a carrier must be designated as an Eligible Telecommunications Carrier either by a state or by the Commission, 47 CFR 54.201, 54.214(e), 54.254(e). To ensure that customers in all areas of the nation have access to affordable voice service, consistent with the principles set forth by Congress, the Commission requires that Eligible Telecommunications Carriers offer supported services—including voice telephony services—at rates that are reasonably comparable to urban rates throughout their designated service areas, unless they can offer a reasonable justification for charging higher rates.

45. This requirement constrains the prices that carriers can charge for voice services in high-cost areas of the country. Currently, the Commission's Office of Economics and Analytics

conducts an annual Urban Rate Survey to determine what constitutes a reasonable comparability benchmark for residential voice services. A voice rate is deemed to be compliant with the Commission's rules if it falls within two standard deviations of the national average of the Urban Rate Survey, 47 CFR 54.313(a)(2). Therefore, Eligible Telecommunications Carriers are presumed to be in compliance with the Commission's rules if they charge no more than the reasonable comparability benchmark. This benchmark helps constrain incumbent local exchange carriers' pricing, even in high-cost areas where robust competition is least likely to occur.

46. The Commission recognizes that a small percentage of consumers do not have competitive options, but its preliminary analysis is that such consumers live in high-cost areas that are currently served by an Eligible Telecommunications Carrier subject to the reasonable comparability benchmark. What is more, the Commission expects that the overwhelming number of census blocks with competitive options will help constrain prices in the very few census blocks that do not have competitive options through unaffiliated mobile voice or broadband services. As the United States Court of Appeals for the District of Columbia Circuit has observed, ''[c]onsumers in areas with fewer than two providers may also reap the benefits of competition; a provider in this area 'will tend to treat customers that do not have a competitive choice as if they do' because competitive pressures elsewhere 'often have spillover effects across a given corporation.''' The Commission seeks comment on this preliminary analysis and these expectations.

47. Furthermore, the Commission expects that the benefits to the vast majority of customers from its removal of ex ante pricing regulation and detariffing of Telephone Access Charges outweigh the potential risk that a small number of consumers without competitive options for voice services may pay higher rates if the Commission deregulates and detariffs Telephone Access Charges. In reaching its forbearance decisions, the Commission has long recognized that unnecessary tariffing requirements may impede carriers' flexibility to react to competition and may harm customers in some circumstances. For example, tariffing requirements can inhibit carriers' ability to offer innovative integrated services designed to meet changing market conditions. In addition, a customer may be adversely affected when a carrier unilaterally changes a rate by filing a tariff revision (so long as the revision is not found to be unjust, unreasonable, or unlawful under the Act) because, pursuant to the ''filed rate doctrine,'' a filed tariff rate, term, or condition controls over a rate, term, or condition set in a non-tariffed carrier-customer contract. Detariffing, on the other hand, can help customers obtain service arrangements that are specifically tailored to their individual needs. Furthermore, detariffing will allow consumers to avail themselves of the protections provided by state consumer protection and contract laws—protections not available to consumers under the filed-rate doctrine.

48. Indeed, the Commission has found that the high costs of regulation likely outweigh the benefits, even in less-than-fully-competitive markets, particularly where regulatory costs are imposed on only one class of competitors. In light of the evidence of widespread competition for voice services, the Commission invites comment on whether, and to what extent, the costs of continued regulation of Telephone Access Charges imposed on incumbent local exchange carriers outweigh the benefits of such regulation. The Commission invites commenters to quantify both the costs and the benefits of its proposal and of any alternative approaches to the removal of ex ante pricing regulation and detariffing of Telephone Access Charges.

49. Finally, the growing number of states that have adopted rate flexibility for the intrastate portion of local telephone services supports the conclusion that in many states deregulating and detariffing Telephone Access Charges will not affect the overall rate customers pay for telephone service. That's because carriers that have pricing flexibility for the intrastate portion of their local voice services can adjust the intrastate portion of their local rates to price their local voice services at market rates notwithstanding existing limits on the interstate portion of those charges. As a result, federal deregulation and detariffing of Telephone Access Charges should not result in any material change in the total rates customers pay for voice service in these states. Thus, the Commission proposes to find that ex ante pricing regulation and tariffing of Telephone Access Charges in such states imposes costs, but likely does not yield any benefits. The Commission seeks comment on its theory of the impact of states' adoption of pricing flexibility for retail rates.

50. The Commission invites commenters to provide it with information about the status and impact of state telephone rate deregulation generally. According to one report, as of 2016, at least 41 states had ''significantly reduced or eliminated oversight of wireline telecommunications'' through legislation or public utility commission action. In several states, state utility commissions no longer have authority to regulate telecommunications services and their prices. California, for example, eliminated pricing regulation for all local exchange services that do not receive state high-cost support, while Tennessee permits incumbent carriers to elect to operate free from the jurisdiction of the state public utility commission, with certain exceptions.

51. Further, a growing number of states have adopted retail rate flexibility for the intrastate portion of local voice services justified, at least in part, by the presence of competitive options. For example, the California Public Utilities Commission found that incumbent local exchange carriers ''lack the market power to sustain prices above the levels that a competitive market would produce'' because of wireless, cable, and VoIP service entrants into the marketplace. Still other states such as Washington and Minnesota have deregulated rates on a service-area or exchange-area basis for services subject to ''effective competition'' or for exchanges satisfying competitive market criteria.

52. In sum, while states are trending toward pricing flexibility for the intrastate portion of local telephone rates, there appears to be considerable variation among states and among areas within states. The Commission seeks comment on that variation and its impact on its proposal, if any. Parties are invited to provide more updated data on intrastate rate regulation and rate flexibility for the intrastate portion of local telephone rates. The Commission seeks comment on whether the varied nature of state regulation of local telephone rates supports or detracts from its proposal to eliminate ex ante pricing regulation and tariffing of Telephone Access Charges nationally.

53. The Commission also seeks comment on whether there are any factors that would either support or call into question its proposal to eliminate ex ante pricing regulation and mandatorily detariff Telephone Access Charges across the country.

54. *Competitive Local Exchange Carriers.* Some competitive local exchange carriers have chosen to tariff some Telephone Access Charges. By definition, such carriers are subject to competition and already have pricing

flexibility. In the interest of parity, the Commission proposes to require competitive local exchange carriers to detariff, on a nationwide basis, all Telephone Access Charges. Competitive local exchange carriers face competition from wireless providers and other competitive wireline providers and must also compete with incumbent local exchange carriers. The Commission sees no justification for allowing competitive local exchange carriers to tariff Telephone Access Charges if incumbent local exchange carriers are prohibited from doing so. The Commission seeks comment on its proposal to require mandatory detariffing of competitive local exchange carriers' Telephone Access Charges.

55. *Detariffing Other Federal Charges.* In addition to Telephone Access Charges, there are other charges related to federal programs that many carriers currently include in their interstate tariffs, *e.g.,* pass-throughs for contributions to the USF. The Commission seeks comment on mandatorily detariffing these charges. Such charges are subject to regulatory requirements and its Truth-in-Billing rules will continue to govern if and how these charges can be passed through to end users. Accordingly, the Commission expects that detariffing these charges will bring the benefits of reduced regulatory requirements while creating little risk of abuse. The Commission seeks comment on this expectation and any other issues that it should consider in deciding whether to detariff all interstate retail charges. The Commission invites commenters to identify these charges and to comment on the costs and benefits of mandatorily detariffing them.

B. Alternative Approaches

56. The Commission invites commenters to offer alternative approaches to determining where and under what circumstances the Commission should eliminate ex ante pricing regulation and require detariffing of Telephone Access Charges. For example, should the Commission take a more case-by-case approach and find that rate regulation is unnecessary only in locations where at least one of the following conditions is met: (1) In an incumbent local exchange carrier's study area, where there is at least one unaffiliated voice provider available in 75% of the populated census blocks; (2) in areas where the Eligible Telecommunications Carrier is subject to the reasonable comparability benchmark; or (3) in states where intrastate rates have been deregulated?

57. Under this alternative, the Commission would remove ex ante pricing regulation and require detariffing of Telephone Access Charges in study areas where there is at least one unaffiliated provider of voice services in 75% of the inhabited census blocks. In the Price Cap BDS Order, the Commission found that one competitor within a census block is sufficient to help constrain prices of business data services offered by an incumbent local exchange carrier. Do commenters believe that one voice competitor in 75% of the inhabited census blocks of a study area is sufficient to help constrain prices for voice services offered by an incumbent local exchange carrier? In the alternative, would competition in a lower percentage of inhabited census blocks in a study area be sufficient to help constrain prices for local voice services? The Commission invites commenters to offer alternatives, explain the bases for the alternatives they offer, and identify supporting data.

58. Under this alternative, the Commission would remove ex ante pricing regulation and require detariffing of Telephone Access Charges at the study-area level because doing so on a census-block basis is not administratively feasible. As the Commission has explained, ''census blocks or census tracts are too numerous to effectively administer'' and ''could lead to a patchwork of different regulations that vary from census block-to-census block.'' Study areas, however, ''are more administratively feasible because there are a limited number'' and the Commission and industry have substantial experience administering rules on a study area basis. Price deregulation and detariffing on the study-area level is likewise sufficiently granular to protect customers across the study area because it is reasonable to assume that incumbent local exchange carriers charge uniform prices across study areas. Further, customers in rural areas of study areas will benefit from both competition in urban areas, as competitive pressures ''often have spillover effects across a given corporation,'' and from the Commission's prohibitions against unjust and discriminatory rates. The Commission seeks comment on these parameters, data, and assumptions, including whether the Commission should evaluate competition using a competitive market test, as it has previously done.

59. Under this alternative, the Commission would also eliminate ex ante pricing regulation and require detariffing of Telephone Access Charges in areas where there is a designated Eligible Telecommunications Carrier subject to the reasonable comparability requirement. Do commenters agree that the reasonable comparability requirement sufficiently constrains retail rates for voice services by ensuring that Eligible Telecommunications Carriers do not charge rates that significantly exceed the rates that apply in competitive urban markets? If so, does it follow that ex ante pricing regulation and tariffing are not necessary in areas where there is an Eligible Telecommunications Carrier subject to the reasonable comparability requirement? Commenters asserting that pricing regulations and interstate tariffs are nonetheless necessary to constrain Eligible Telecommunications Carriers' Telephone Access Charges should explain why the reasonable comparability requirement is not sufficient to ensure that Eligible Telecommunications Carriers' rates are just and reasonable. Should the Commission instead deregulate and detariff Telephone Access Charges based on a combination of competition and reasonable comparability requirements in an area? For example, should the Commission do so if competition does not hit the 75% threshold discussed above, but the reasonable comparability requirement holds in areas without competition?

60. If the Commission eliminates ex ante pricing regulation and require detariffing of Telephone Access Charges based on a carrier's obligation to comply with the reasonable comparability requirement, would a new benchmark for business customers be necessary to constrain retail rates charged to business customers? There is currently no benchmarking process for retail rates charged to business customers. The Commission recognizes that business customers may purchase very different voice services depending on a variety of factors and that many businesses purchase voice services pursuant to negotiated contracts. The Commission seeks comment on whether a comparability benchmark for business customers is necessary given their ability to negotiate contract rates, especially when voice services are often bundled with other services. Does the current benchmark for residential customers constrain prices for business customers? Could a benchmarking process be developed for retail business rates? If a benchmarking process for retail business rates could be developed, would such development be unduly complex and burdensome given the differences among voice services purchased by business customers?

61. Under this alternative, the Commission would also eliminate ex ante pricing regulation and require detariffing of Telephone Access Charges for incumbent local exchange carriers in study areas where states have deregulated the rates charged for the intrastate portion of local voice services. The Commission would do so given that a carrier's current ability to adjust its end-user rates due to state deregulation means that federal deregulation and detariffing of Telephone Access Charges will not result in increased prices for voice services. Should the Commission generate and maintain a list of areas where there is state retail rate pricing flexibility? Should the Commission have carriers self-certify whether the intrastate portion of local voice services are no longer subject to state price controls and use those certifications as the basis for a list? If the Commission does elect to maintain a list of states that have deregulated the rates charged for the intrastate portion of local voice services, should the Commission update that list periodically—every three years, for example—to ensure that it accurately reflects state regulation of retail rates. How would the Commission make the list available to the public? Should the Commission direct the Wireline Competition Bureau to issue a Public Notice updating the list every few years? If a state were to re-implement rate regulation of the intrastate portion of local voice services, what effect should that have on the Commission's price deregulation and detariffing of Telephone Access Charges?

62. The Commission invites comment on this alternative approach and the costs and benefits of such an approach. Assuming that competition and the reasonable comparability requirements impose sufficient pricing constraints on carriers subject to them, and that federal price regulation does not have any practical effect in areas where states offer pricing flexibility, are there any other reasons to impose federal tariffing and pricing regulations with respect to Telephone Access Charges? The Commission invites commenters to identify any such reasons and the relative benefits and costs of leaving ex ante pricing regulation and tariffing in place as compared to its alternative proposal to deregulate and detariff the Telephone Access Charges.

63. The Commission also seeks comment on other alternative proposals, along with the data and assumptions supporting any alternative. For instance, should the Commission consider permissive detariffing of Telephone Access Charges for some categories of carriers, such as rate-of-return carriers, as suggested by NTCA? What considerations, if any, would support a different approach for such carriers? How would permissive detariffing for some carriers and mandatory detariffing for others affect the overall policy goals of this proceeding? Are there other alternatives the Commission should consider for some categories of carriers? Commenters supporting an alternative approach should also address the costs and benefits of such an approach.

C. Measures To Simplify Consumers' Telephone Bills

64. Consistent with its ongoing efforts to simplify consumers' telephone bills, the Commission also proposes to modify its truth-in-billing rules, 47 CFR 64.2400–64.2401, to explicitly prohibit carriers from assessing any separate Telephone Access Charges, such as Subscriber Line Charges and Access Recovery Charges, on customers' bills after those charges are deregulated and detariffed. The Commission seeks comments on this proposal. The Commission also invites suggestions for how to minimize any customer confusion regarding telephone bills during the transition to price deregulation and detariffing of Telephone Access Charges.

65. The Commission remains concerned that telephone bills are too complicated and difficult to read and understand. For example, the terms used by carriers to describe Subscriber Line Charges, such as ''FCC-Approved Customer Line Charge,'' ''FCC Subscriber Line Charge,'' and ''Federal Line Fee,'' are meaningless to most consumers. They may also lead consumers to mistakenly believe that the government mandates the amount of Subscriber Line Charges or other Telephone Access Charges.

66. Prohibiting carriers from using separate, obscurely worded line items to bill for the interstate portion of local telephone services should make it easier for customers to understand their bills and to compare rates between different providers. As a result, greater transparency can improve the effectiveness of competition. Studies of pricing transparency in other industries have shown that increased price transparency reduces prices paid by consumers. For example, the advent of the internet, which enabled consumers to make better price comparisons, appears to have reduced the prices for life insurance policies by about 8% to 15%. Evidence that price transparency can benefit consumers has been found in markets for many other products as well, including prescription drugs, eye exams and eyeglasses, gasoline, automobiles and securities. The Commission would expect that bringing advertised rates for voice services closer to what consumers actually pay would yield similar price reductions. Moreover, Telephone Access Charges are vestiges of legacy telephone networks when most local exchange carriers were subject to comprehensive cost-based regulatory regimes and operated in a substantially different telecommunications marketplace. The Commission does not think that these charges should have a place on consumers' phone bills once those charges are deregulated and detariffed. The Commission invites comment on that reasoning.

67. Assuming that its proposal results in greater price transparency, how could the Commission estimate the benefits that such increased transparency would bring? Should the Commission expect price declines similar to those observed in other industries when consumers were better able to compare prices? If not, is there other evidence or are there other approaches the Commission should consider to evaluate the benefits of greater transparency provided by its proposal? Are there factors that the Commission's proposal fails to address that should be addressed in its final rules? Are there are other changes that should be made to the Commission's truth-in-billing rules to effectuate the changes proposed here?

68. The Commission recognizes that some states may authorize carriers to collect charges for the intrastate portion of local voice services from their customers using billing descriptions similar to the Telephone Access Charges. Are there state requirements that would prohibit carriers from completely eliminating separate line-item charges from their bills? If so, how should the Commission address those requirements to carry out its policy of minimizing consumer confusion? Are there other issues related to the billing of intrastate charges of which the Commission should be aware? For example, how are such charges listed on customers' bills? In those states where carriers do not have pricing flexibility with respect to the intrastate portions of their local telephone service, how will continuing state regulation of those intrastate rates affect the Commission's proposal to prohibit carriers from assessing any separate Telephone Access Charges on customers' bills? For example, if a carrier is precluded by state regulations from changing its local service rates, what steps does the Commission need to take to ensure that a carrier has flexibility to charge its customers for the interstate component

of the service currently collected through Telephone Access Charges?

69. Are there states that authorize or require carriers to assess separate intrastate end-user charges? If so, the Commission asks that commenters provide specific examples. To the extent such state laws or regulations exist, should the Commission require carriers to make it clear that the listed charges are not federally authorized? Do carriers combine Telephone Access Charges and intrastate end-user charges into a single line item? If so, how do they identify and describe that charge on the bill? To the extent that some carriers may be prohibited by state law from combining charges for the intrastate and interstate portions of their local telephone service on customers' bills, should the Commission require such carriers to charge for the interstate portions of that service in a certain manner or using uniform nomenclature? If so, the Commission seeks comment on the specifics of such an approach. In the alternative, where state laws or regulations prohibit carriers from combining charges for the intrastate and interstate portions of their local telephone service on customers' bills, should the Commission consider preempting such laws and regulations on the basis that it would be impossible to comply both with those laws and the rules proposed in this proceeding and that such regulations conflict with the regulatory objectives of this proceeding?

70. Finally, the Commission also seeks comment on any consumer education initiatives the Commission or providers should undertake to help consumers understand any billing changes that may result from its proposed changes.

D. Addressing Related Universal Service Fund and Other Federal Program Issues

71. The Commission proposes ways to address issues related to the Universal Service Fund's and other federal programs' historic reliance on Telephone Access Charges in certain circumstances. Addressing these issues at the outset will ensure that the rural carriers that rely on such federal funds will have the certainty they need to continue investing in the deployment of next-generation networks and services in rural America.

72. *Connect America Fund Broadband Loop Support.* The Commission proposes several modifications to its rules for calculating CAF BLS to address the detariffing of Telephone Access Charges—modifications that the Commission does not expect will materially change the amount of funds made available for carriers relying on this mechanism to continue to serve their service areas.

73. The Commission first proposes to require that legacy rate-of-return carriers that use costs to determine CAF BLS support use $6.50 for residential and single-line business lines and $9.20 for multi-line business lines (the maximum Subscriber Line Charge amounts) to calculate their CAF BLS going forward. By using these fixed amounts rather than a tariffed rate, the Commission ensures that carriers will continue to be able to calculate CAF BLS. The Commission expects that this approach will have minimal effect on the CAF BLS legacy rate-of-return carriers receive since most, if not all, of those carriers are currently charging the maximum Subscriber Line Charges allowed under its rules. Are there any legacy rate-of-return carriers that would be adversely affected by the Commission's proposal? If so, should the Commission require each of those carriers to identify the highest end-user charge that it could have assessed on the day preceding the day that it detariffs its Telephone Access Charges and use that amount to calculate its CAF BLS going forward?

74. The Commission also seeks comment on how to account for other Telephone Access Charges affecting the calculation of CAF BLS that will be detariffed. The Commission proposes to delete any requirement to offset Special Access Surcharges from CAF BLS. As a result, a carrier receiving CAF BLS will not have to reflect any revenues for this charge in determining revenues for purposes of calculating CAF BLS. Given the minimal amount of Special Access Surcharge revenues being collected, the Commission expects making this change will have a negligible impact on CAF BLS. Additionally, the Commission proposes to require carriers to use the rates they are charging for line ports as of the effective date of an order adopting these reforms. This recognizes that carriers assess individual Line Port Charges differently. The Commission seeks comment on these proposals. Alternatively, should the Commission develop a uniform rate for each type of line port that is currently tariffed and, if so, how should such a rate be determined? Would a weighted average of the currently tariffed monthly rates in the National Exchange Carrier Association tariff be a reasonable approach? Or should the Commission eliminate the requirement to take into account Line Port Charges when calculating CAF BLS? Or instead should the Commission impute the aggregate Line Port Charges of each carrier on the effective date of an order adopting these reforms to said carrier for purposes of calculating CAF BLS?

75. The Commission expects that these proposed approaches would limit any adverse effects on the CAF BLS program and also minimize the administrative and other burdens on legacy rate-of-return carriers, most of which are small entities. The Commission invites parties to comment on this expectation. Are there alternative approaches the Commission should consider to account for these revenues when calculating their CAF BLS after these charges have been detariffed? Are there any other Telephone Access Charges that would affect CAF BLS calculations? The Commission also asks parties to comment on whether there should be any particular relationship between how end-user rates are treated in connection with determining CAF BLS and on how they are treated in determining the revenues that may be assessed for universal service contribution purposes.

76. The Commission invites parties to suggest other approaches that would minimize the effects of its proposals on CAF BLS. Parties should identify and quantify the costs and benefits that would result from any alternative proposals. The Commission invites parties to address the extent to which (if at all) the Commission should change the rules governing participation in the National Exchange Carrier Association tariffing and pooling processes to reflect the detariffing of Telephone Access Charges. Finally, if the Commission adopts its proposal to detariff and deregulate the pricing of Telephone Access Charges, in order to effectuate that proposal, are there any changes that the Commission should adopt to other Commission rules, including its rules relating to the functions of the National Exchange Carrier Association or the USF administration responsibilities handled by the Universal Service Administrative Company?

77. *Connect America Fund Intercarrier Compensation.* The Commission next seeks comment on how to ensure that detariffing of the Access Recovery Charge does not unreasonably affect the amount of funds that rate-of-return carriers are eligible to receive from CAF ICC. The CAF ICC support that a rate-of-return carrier receives is reduced by the Access Recovery Charge that the carrier is permitted to charge and by an imputed amount based on the Access Recovery Charge that the carrier could have charged on voice or voice-data lines if such charges could be assessed on Consumer Broadband Only Loop lines. Thus, eliminating the Access Recovery

Charge affects the calculation of CAF ICC support.

78. The Commission proposes to require rate-of-return carriers to calculate CAF ICC using the maximum Access Recovery Charge that could have been assessed on the day preceding the detariffing of that charge. This approach is administratively simple and would eliminate any uncertainty about how to account for the Access Recovery Charge in calculating CAF ICC. The Commission invites parties to comment on this approach, noting in particular the potential effects of this approach. Alternatively, should the Commission eliminate the ongoing imputation of Access Recovery Charges for such carriers and instead reduce their Eligible Recovery each year by the aggregate Access Recovery Charge revenue they were actually receiving on the effective date of any order adopting reforms? This would eliminate the need to true up Access Recovery Charge revenues along with providing some administrative efficiencies.

79. The Commission invites parties to suggest other approaches for addressing potential effects of detariffing Access Recovery Charges on CAF ICC. Parties should identify potential issues and quantify the costs and benefits that would result from any alternative proposals.

80. *Contributions to the Universal Service Fund and Other Federal Programs.* Every telecommunications carrier that provides interstate telecommunications services has an obligation to contribute, on an equitable and nondiscriminatory basis, to the federal Universal Service Fund, as well as several other programs. Although the Commission has not codified any rules for how contributors should allocate revenues between the interstate and intrastate jurisdictions for contributions purposes, many incumbent local exchange carriers (and some competitive local exchange carriers) have relied on the tariffing of Telephone Access Charges at the federal level as their means of determining their interstate and international revenues for contributions purposes. These revenues are reported on FCC Form 499–A and are used for purposes of determining their contributions to the USF, the Interstate Telecommunications Relay Service Fund, Local Number Portability Administration, and North American Numbering Plan Administration. To help ensure continued stability of the USF and other federal programs, the Commission seeks comment on two alternative proposals for allocating interstate and intrastate revenues for voice services in light of its proposed elimination of ex ante pricing regulation and detariffing of Telephone Access Charges.

81. *First,* the Commission seeks comment on adopting an interstate safe harbor of 25% for local voice services provided by local exchange carriers, with the option for such carriers to file individualized traffic studies to establish a different allocation. As used here, ''local voice services revenue'' includes revenues from local exchange service and revenues related to detariffed Telephone Access Charges. Local voice services revenue does not include revenues associated with bundled toll services. The Commission proposes a 25% safe harbor because these revenues largely reflect common line recovery and 25% of common line costs have historically been allocated to the interstate jurisdiction, 47 CFR 36.2(b)(3)(iv).

82. Such an approach would be consistent with the existing approach for other voice service providers and types of services. Specifically, the Commission's current rules provide a safe harbor for assessing contributions for mobile wireless service providers and interconnected VoIP providers. The Commission has set an interstate safe harbor of 37.1% for wireless operators and 64.9% for interconnected VoIP providers. In adopting the 37.1% safe harbor, the Commission reasoned that this would ensure that mobile wireless service providers' obligations are on par with carriers offering similar services that must report actual interstate end-user telecommunications revenue. For interconnected VoIP services, the Commission established 64.9% as the safe harbor, which was the percentage of interstate revenues reported to the Commission by wireline toll providers.

83. As with other contributions safe harbors, the Commission proposes to allow a local exchange carrier to use traffic studies to determine its contributions base, rather than avail itself of the proposed safe harbor. Pursuant to the criteria contained in Form 499–A, traffic studies, among other things: (1) ''may use statistical sampling to estimate the proportion of minutes that are interstate and international''; (2) must account for all interstate or international charges as ''100 percent interstate or international''; (3) must be designed to use sampling techniques to produce a margin of error of no more than 1% with a confidence level of 95%; and (4) should explain the methods and estimation methods employed and why the study results in an unbiased estimate. If a local exchange carrier elects to use a traffic study to determine its interstate and international revenues for universal service contribution purposes, it would be required to submit the traffic studies for review. The Commission's current rules require affiliated entities to make a single election, for all of the affiliates each quarter, as to whether to use a traffic study or to use the safe harbor adopted for that category of services. The Commission proposes applying the same study area and election requirement to local exchange carriers.

84. The Commission invites parties to comment on this proposal and, in particular, on the costs and benefits of the proposal. Is 25% a reasonable percentage of local voice services revenue to use as a safe harbor for assessing federal USF contributions? Could the introduction of this safe harbor and/or the Commission's proposal to allow carriers to submit a traffic study materially change the amount of contributions obtained from local voice services? If so, are there other alternatives that will better estimate the contributions base? Will the Commission's proposed approach ensure that all carriers make an equitable USF contribution? Are there other factors that the Commission should consider in establishing a safe harbor? The Commission invites parties experienced with the use of other safe harbors to provide information that will help inform its decision-making with respect to a proposed safe harbor as a proxy for the contributions carriers currently make based on their actual Telephone Access Charges. The Commission invites parties to address whether the use of a traffic study to estimate interstate and international revenues will result in a contributions base that will provide comparable support to that provided by the safe harbor and is equitable among contributors. Are there alternative approaches that would produce better estimates? Are there other methods for determining the percentage of interstate and international traffic that should be used?

85. *Second,* the Commission sought comment in 2012 on adopting bright-line rules for the allocation of interstate and intrastate revenues for broad categories of services. In light of the other proposals the Commission makes today, the Commission now seeks comment on taking that proposed approach for all end-user voice services currently tariffed at the federal level—those offered by incumbent local exchange carriers as well as those offered by competitive local exchange carriers. The Commission's analysis in 2012 showed that the allocation of

interstate and intrastate e revenues remained consistent over time (between 20% and 30% of total revenues for non-toll services were interstate and international and around 70% for toll services). The Commission invites comment on whether that allocation has continued to remain consistent. The Commission also seeks comment on all aspects of adopting bright-line rules for the allocation of interstate and intrastate revenue for such voice services, such as whether the Commission would need to set different fixed allocators for different categories of voice services (and whether that would create any competitive distortions in the marketplace or increase compliance burdens), what that allocator should be (the Commission specifically sought comment on a 20% interstate allocator, but the Commission now seeks comment on whether it should be higher such as 25%, 30%, or even 50%), how much weight to give the traffic studies filed by some reporting entities (considering the apparent differences in methodology the Commission observed in 2012), and whether the Commission would need to create some form of opt-out based on actual revenue receipts (for example, for a local voice service not connected to the interstate public switched telephone network). Would such an approach reduce the administrative costs of compliance, ease oversight, reduce gamesmanship, and ensure a steady stream of contributions are available for the USF going forward?

86. The Commission's goal is to help ensure that carriers properly attribute revenues to the interstate jurisdiction and prevent carriers from avoiding contributions altogether by allocating all their revenues to the intrastate jurisdiction. This sort of gamesmanship could destabilize the contribution base used to fund universal service and other programs. The Commission invites comment on the extent to which each proposal would ensure that local exchange carriers would continue to contribute on an equitable and non-discriminatory basis.

87. Are there alternative approaches the Commission could take to ensure that local exchange carriers that currently assess Telephone Access Charges continue to comply with their obligations to contribute to the federal USF? Parties proposing other alternatives for determining assessable revenues should present data to support their proposals. They should explain how their proposed alternative would minimize the effects on the contributions base and reduce administrative burdens compared to the safe harbor approach the Commission proposes here. Parties should also identify any changes that are necessary to Form 499–A or 499–Q and the associated instructions to reflect changes made in response to this Notice.

E. Transition Period

88. To allow affected carriers sufficient time to amend their tariffs and billing systems, the Commission proposes a transition that would permit carriers to detariff Telephone Access Charges with a July 1 effective date, consistent with the effective date of the annual access charge tariff filing, 47 CFR 69.3, following the effective date of the Order in this proceeding, and would require carriers to detariff these charges no later than the second annual tariff filing date following the effective date of such order. Carriers would be required to remove Telephone Access Charges from relevant portions of their interstate tariffs on one of these two annual access tariff filing dates, at the option of the carrier. Carriers would not be permitted to detariff these charges on dates other than the annual tariff filing dates specified by Commission. These dates will facilitate the transition process for incumbent local exchange carriers who use computerized programs to determine their Eligible Recovery and, for rate-of-return carriers, their CAF ICC. Finally, it will avoid placing large administrative costs on the National Exchange Carrier Association if member carriers were to elect to detariff at varying times during the year. Once the transition ends, no affected carrier would be permitted to include these charges in its interstate tariffs.

89. The Commission seeks comment on whether the proposed transition period provides carriers adequate time to amend their tariffs. The Commission also seeks comment on how to minimize consumer confusion during that transition. Should the Commission consider a different transition period for different classes of carriers, because its proposed actions may affect different classes of carriers differently? For instance, should the Commission apply the proposed transition to incumbent local exchange carriers, because the Commission currently regulates their Telephone Access Charges, but prescribe a shorter transition for competitive local exchange carriers, which have unregulated end-user charges? Would small carriers require more time for the transition? Would the changes proposed here affect existing contractual arrangements and, if so, would the proposed transition allow carriers adequate time to meet or amend those contractual arrangements? Should the Commission consider a different transition for carriers depending on how they may be affected by changes to universal service calculations? The Commission seeks comment on the specific costs associated with the transition, and how they could be reduced, especially for small carriers.

90. Finally, the Commission seeks comment on whether the proposed transition provides enough time to address changes to customer billing. Because the Commission proposes to prohibit affected carriers from separately listing any Telephone Access Charges on customer bills, carriers would need to make conforming changes to their billing systems and to customers' bills. The Commission seeks comment on whether the proposed transition period would provide carriers adequate time to modify their billing systems and customer bills, and to provide any necessary notices to their customers.

F. Legal Authority

91. *Section 201(b) Authority.* The Commission intends to rely on section 201(b) of the Act to eliminate ex ante price regulation of Telephone Access Charges where such regulation is no longer necessary. Section 201(b) of the Act specifies that ''[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.'' It also allows the Commission to ''prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.'' This authority necessarily includes the authority to opt not to regulate—or to deregulate—carriers' interstate rates if such regulation is no longer necessary and thus, deregulation is in the public interest. Even if the Commission eliminates its current pricing regulations, any violations of the reasonableness and nondiscrimination requirements of sections 201 and 202 of the Act, 47 U.S.C. 201–202, could be addressed through the complaint process under section 208 of the Act, 47 U.S.C. 208. The Commission seeks comment on these conclusions.

92. The Commission also intends to use its authority under section 201(b) of the Act to prohibit carriers from including separate line items for any Telephone Access Charges, such as Subscriber Line Charges and Access Recovery Charges, on customers' bills. The Commission seeks comment on the nature and scope of its authority to

adopt these proposals. The Commission has traditionally relied on its section 201(b) authority to adopt its truth-in-billing rules. Are there other statutory provisions that would support the Commission's proposal to prohibit the assessment of these separate Telephone Access Charges? Are there any potential legal impediments that the Commission need to address? In the First Truth-in-Billing Order, for example, the Commission determined that commercial speech that is misleading is not entitled to the protections of the First Amendment and may be prohibited.

93. *Forbearance Authority.* The Commission intends to rely on its authority under section 10 of the Act to forbear from section 203 of the Act, 47 U.S.C. 203, and any associated regulations, to the extent necessary to detariff Telephone Access Charges on a mandatory basis. The Commission also intends to use its forbearance authority as an alternate basis for eliminating ex ante price regulation where it is no longer necessary or in the public interest. Under section 10 of the Act, the Commission can forbear, on its own motion, from applying any regulation or provision of the Act in any or some of a carrier's (or class of carriers') geographic markets if the Commission determines that the following three forbearance criteria are met: ''(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.'' The Commission has previously relied on its forbearance authority to detariff and deregulate interstate services. The Commission seeks comment on whether the forbearance criteria are met with respect to both mandatory detariffing and price deregulation of Telephone Access Charges in each of the circumstances and conditions described herein.

94. *Statutory Authority to Support Universal Service and Other Federal Programs.* The Commission intends to use its authority under section 254 of the Act, 47 U.S.C. 254(d), to make any changes necessary to ensure that the Commission minimizes any adverse impact of its proposed reforms on universal service contributions and support. Section 254(d) requires telecommunications carriers that provide interstate telecommunications services to ''contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.'' Section 254(d) also provides the Commission's authority to require other providers of interstate telecommunications ''to contribute to the preservation and advancement of universal service if the public interest so requires.'' Section 254(e) specifies that only Eligible Telecommunications Carriers designated under section 214(e) of the Act shall be eligible to receive universal service support, and that ''such support should be explicit and sufficient to achieve the purposes'' of section 254 of the Act. Together, these statutory provisions provide the Commission authority to revise its rules consistent with these requirements and adopt the proposals relating to universal service. The Commission invites comment on this use of the Commission's section 254 authority.

95. Similarly, the Commission intends to use its authority under sections 225, 251 and 715 of the Act, 47 U.S.C. 225, 251(e)(2), 616, to make any changes necessary to ensure that the Commission minimizes any adverse impact of its proposed reforms on the TRS Fund, Local Number Portability Administration, and North America Numbering Plan Administration. Sections 225 and 715 provide the Commission authority to prescribe contributions to TRS from ''all subscribers for every telecommunications service'' and from interconnected and non-interconnected VoIP service providers. Section 251(e)(2) provides that the ''cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.'' The Commission seeks comment on its authority under sections 225, 251 and 715 of the Act to minimize any adverse impacts of its proposed reforms on these programs.

IV. Procedural Matters

A. Paperwork Reduction Act Analysis

96. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Initial Regulatory Flexibility Analysis

97. As required by the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Notice of Proposed Rulemaking. The Initial Regulatory Flexibility Analysis is set forth in Appendix B of the Notice and below. Written public comments are requested on the Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines for comments on the Notice, and they should have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

98. *Need for, and Objectives of, the Proposed Rules.* Despite dramatic changes in the competitive landscape for voice services in the past twenty-five years, the Commission continues to regulate the Telephone Access Charges imposed by incumbent local exchange carriers. The Notice suggests that continued regulation and tariffing of Telephone Access Charges is no longer necessary or in the public interest. Consistent with the Commission's commitment to eliminate outdated and unnecessary regulations and to encourage efficient competition, the Commission proposes to deregulate and detariff these charges nationwide, or in the alternative, in certain areas where specific criteria indicate that rate regulation is unnecessary. The Commission also seeks comment on mandatorily detariffing other charges related to federal programs that many carriers currently include in their interstate tariffs.

99. In the interest of enabling consumers to easily compare voice service offerings by different providers, the Commission also proposes to modify

its truth-in-billing rules to explicitly prohibit carriers from assessing any separate Telephone Access Charges, such as Subscriber Line Charges and Access Recovery Charges, on customers' bills when those charges are deregulated and detariffed. Prohibiting carriers from using separate, obscurely worded line items to bill for the interstate portion of local telephone services should make it easier for customers to understand their bills and to compare rates between different providers. Doing so should help ensure that a provider's advertised price is closer to the total price that appears on its customers' bills.

100. The Commission proposes several modifications to its rules for calculating Connect America Fund Broadband Loop Support (CAF BLS) and CAF Intercarrier Compensation (CAF ICC) to address the detariffing of Telephone Access Charges—modifications that the Commission does not expect will materially change the amount of funds made available for carriers relying on this mechanism to continue to serve their service areas. Given that some Telephone Access Charges are used to calculate contributions to the Universal Service Fund (USF) and other federal programs, as well as high-cost support, the Commission also proposes ways to provide certainty in calculating such contributions and support to ensure stability in funding following pricing deregulation and detariffing of Telephone Access Charges. Addressing these issues at the outset will ensure that the rural carriers that rely on such federal funds will have the certainty they need to continue investing in the deployment of next-generation networks and services in rural America. The Notice seeks comment on these proposals.

101. *Legal Basis.* The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1, 4(i), 10, 201–203, 214, 225, 251, 254, 303(r), and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 201–203, 214, 225, 251, 254, 303(r), 616, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR 1.1 and 1.412.

102. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* 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 rule revisions, 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,'' 5 U.S.C. 601(3)–(6). 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.

103. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

104. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field,'' 5 U.S.C. 610(4). The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

105. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand,'' 5 U.S.C. 601(5). U.S. Census Bureau data from the 2017 Census of Governments, 13 U.S.C. 161, indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

106. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

107. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

108. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000

employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by its actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

109. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees, 13 CFR 121.201. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

110. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees, 13 CFR 120.201. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

111. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees, 13 CFR 121.201. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities.

112. *Internet Service Providers (Broadband).* Broadband internet service providers include wired (*e.g.,* cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry,'' 13 CFR 120.201. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees, 13 CFR 120.201. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

113. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide, 47 CFR 76.901(e). Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers, 47 CFR 76.901(c). Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, the Commission estimates that most cable systems are small entities.

114. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $35 million or less, 13 CFR 121.201. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the

entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by its action can be considered small.

115. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission proposes to detariff and deregulate all Telephone Access Charges nationwide, or in the alternative, in areas where specific criteria indicate that rate regulation is unnecessary. The affected carriers will need to file amendments to their tariffs with the Commission in order to detariff their Telephone Access Charges within the proposed transition period. The Commission also seeks comment on mandatory detariffing of other charges related to federal programs that many carriers currently include in their interstate tariffs. Because the Commission also proposes to prohibit carriers from including Telephone Access Charges as separate line items on customer bills, affected carriers will need to make changes to existing billing formats and may need to educate their customers. Carriers will likely modify their in-house recordkeeping to reflect the changes. The Commission proposes a transition to facilitate the detariffing of Telephone Access Charges to address potential administrative burdens.

116. The Commission seeks to ensure certainty in calculating contributions to the USF, the interstate Telecommunications Relay Service Fund, Local Number Portability Administration, and the North American Numbering Plan Administration. The Commission proposes to adopt a safe harbor for incumbent and competitive local exchange carriers to use as a proxy for the contributions carriers currently make based on their actual Telephone Access Charges. The Commission proposes to treat 25% of a carrier's local voice services revenue as assessable revenue subject to contribution obligations. Alternatively, a carrier that does not want to rely on the safe harbor would have the option of providing a traffic study demonstrating the actual percentage of its local voice traffic that is interstate and international in nature and using that percentage to determine its contributions base. The Commission also seeks comment on adopting bright-line rules for the allocation of interstate and intrastate revenues for all voice services—those offered by local exchange carriers, as well as those offered by other voice service operators. The Commission seeks comment on alternative approaches and on whether the proposed approach will ensure that all carriers make equitable contributions. The rules could potentially affect recordkeeping and reporting requirements.

117. The Commission also proposes to amend its rules to provide certainty in the amount of CAF BLS and CAF ICC support rate-of-return carriers receive following the deregulation and detariffing of Telephone Access Charges. The Commission seeks comment on proposals to establish fixed levels for future inputs to the CAF BLS and CAF ICC calculations, as well as seeking alternatives to the proposals. The rules could affect recordkeeping and reporting requirements.

118. *Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered.* 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 rules 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 such small entities, 5 U.S.C. 603(c)(1)–(4). The Commission expects to consider all of these factors when the Commission receives substantive comment from the public and potentially affected entities.

119. The Notice seeks comment on a proposal to deregulate and mandatorily detariff Telephone Access Charges nationwide, or in the alternative, in certain areas where specific criteria indicate that rate regulation is unnecessary. The Commission invites comment on whether, and to what extent, the costs of continued regulation of Telephone Access Charges imposed on incumbent local exchange carriers outweigh the benefits of such regulation. The Commission invites commenters to quantify both the costs and the benefits of its proposal and of any alternative approaches to detariffing and deregulating the pricing of Telephone Access Charges. The Commission also seeks comment on detariffing charges related to contributions to the federal USF that many carriers currently include in their interstate tariffs and seek comment on the costs and benefits of mandatorily detariffing these charges.

120. The Notice also seeks comment on a proposal to prohibit all carriers from separately listing Telephone Access Charges on customers' bills. The Commission seeks comment on how much time carriers would need to modify their existing billing systems to comply with its proposed rule changes and how the Commission could minimize burdens, particularly for smaller carriers. As an initial proposal, the Commission proposes a transition that would permit carriers two opportunities, one year apart, to detariff Telephone Access Charges at the same time as the annual access tariff filing, thereby eliminating the need for any additional tariff filings. The Commission expects that these options will allow even the small entities adequate time to amend their tariffs and meet most, if not all, existing contractual arrangements.

121. The Notice also proposes to amend the Commission's rules to provide certainty in the amount of CAF BLS and CAF ICC support rate-of-return carriers receive following the deregulation and detariffing of Telephone Access Charges. The Commission seeks comment on proposals to establish fixed levels for future inputs to the CAF BLS and CAF ICC calculations, as well as seeking alternatives to the proposals.

122. To provide certainty in calculating USF contributions and support to ensure stability in funding following the deregulation and detariffing of Telephone Access Charges, the Commission proposes to adopt a safe harbor for incumbent and competitive local exchange carriers to use to determine their assessable revenue from the interstate access portion of local service for purposes of determining their contribution obligations, but to permit carriers to submit traffic studies if they do not want to rely on the safe harbor. The Notice seeks comment on this proposal and a few different alternative approaches. The Commission also seeks comment on adopting bright-line rules for the allocation of interstate and intrastate revenues for all voice services and seek comment on all aspects of adopting bright-line rules for the allocation of interstate and intrastate revenue for all voice services.

123. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice and this IRFA, in reaching its final conclusions and promulgating rules in this proceeding.

The proposals and questions laid out in the Notice were designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods.

124. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

C. Ex Parte Presentations: Permit-But-Disclose

125. The proceeding that this Notice of Proposed Rulemaking initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules, 47 CFR 1.1200 *et seq.* Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).

126. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

V. Ordering Clauses

127. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 10, 201–203, 214, 225, 251, 254, 303(r), and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 201–203, 214, 225, 251, 254, 303(r), 616, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR 1.1, 1.412, this Notice of Proposed Rulemaking *is adopted*, effective thirty (30) days after publication of a summary thereof in the **Federal Register**.

128. *It is further ordered* that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before 45 days after publication of a summary of this Notice of Proposed Rulemaking in the **Federal Register** and reply comments on or before 75 days after publication of a summary of this Notice of Proposed Rulemaking in the **Federal Register**.

129. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 51

Communications common carriers, Telecommunications,

47 CFR Part 54

Communications common carriers, Internet, Reporting and recordkeeping requirements, Telecommunications, Telephone,

47 CFR Part 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 51, 54, 61, and 69 as follows:

PART 51—INTERCONNECTION

■ 1. The authority citation for part 51 is revised to read as follows:

Authority: 47 U.S.C. 151–155, 201–205, 207–209, 218, 225–227, 251–252, 271, 332 unless otherwise noted.

■ 2. Amend § 51.915 by revising paragraph (e)(1) and adding paragraph (e)(6) to read as follows:

§ 51.915 Recovery mechanism for price cap carriers.

* * * * *

(e) *Access Recovery Charge.*

(1) Subject to paragraph (e)(6) of this section and to the caps described in paragraph (e)(5) of this section, a charge that is expressed in dollars and cents per line per month may be assessed upon end users that may be assessed an end user common line charge pursuant to § 69.152 of this chapter, to the extent necessary to allow the Price Cap Carrier to recover some or all of its Eligible Recovery determined pursuant to paragraph (d) of this section. A Price Cap Carrier may elect to forgo charging some or all of the Access Recovery Charge.

* * * * *

(6) Price Cap Carrier otherwise entitled to assess an Access Recovery Charge may not do so if it is subject to detariffing pursuant to § 61.27 of this chapter.

* * * * *

■ 3. Amend § 51.917 by:

■ a. Revising paragraph (e)(1),

■ b. Adding paragraph (e)(7),

■ c. Revising paragraphs (f)(2), (4) and (5), and

■ d. Adding paragraph (f)(6).

The revisions and additions read as follows:

§ 51.917 Revenue recovery for Rate-of-Return Carriers.

* * * * *

(e) *Access Recovery Charge.*

(1) Subject to paragraph (e)(7) of this section and to the caps described in paragraph (e)(6) of this section, a charge that is expressed in dollars and cents per line per month may be assessed upon end users that may be assessed a subscriber line charge pursuant to § 69.104 of this chapter, to the extent necessary to allow the rate-of-return carrier to recover some or all of its Eligible Recovery determined pursuant to paragraph (d) of this section. A rate-of-return carrier may elect to forgo charging some or all of the Access Recovery Charge.

* * * * *

(7) A rate-of-return carrier otherwise entitled to assess an Access Recovery Charge may not do so if it is subject to detariffing pursuant to § 61.27 of this chapter.

(f) *Rate-of-return carrier eligibility for CAF ICC Recovery.*

(1) * * *

(2) Subject to paragraph (f)(6) of this section, beginning July 1, 2012, a rate-of-return carrier may recover any Eligible Recovery allowed by paragraph (d) of this section that it could not have recovered through charges assessed pursuant to paragraph (e) of this section from CAF ICC Support pursuant to § 54.304. For this purpose, the rate-of-return carrier must impute the maximum charges it could have assessed under paragraph (e) of this section.

(3) * * *

(4) Subject to paragraph (f)(6) of this section, and except as provided in paragraph (f)(5) of this section, a rate-of-return carrier must impute an amount equal to the Access Recovery Charge for each Consumer Broadband-Only Loop line that receives support pursuant to § 54.901 of this chapter, with the imputation applied before CAF–ICC recovery is determined. The per line per month imputation amount shall be equal to the Access Recovery Charge amount prescribed by paragraph (e) of this section, consistent with the residential or single-line business or multi-line business status of the retail customer.

(5) Subject to paragraph (f)(6) of this section, and notwithstanding paragraph (f)(4) of this section, commencing July 1, 2018 and ending June 30, 2023, the maximum total dollar amount a carrier must impute on supported Consumer Broadband-Only Loops is limited as follows:

* * * * *

(6) A rate-of-return carrier subject to detariffing pursuant to § 61.27 of this chapter must reduce its Eligible Recovery by:

(i) An amount equal to the maximum Access Recovery Charge- that could have been assessed pursuant to paragraph (e) of this section on the day preceding the detariffing multiplied by the projected subscriber lines for the period associated with the Eligible Recovery calculation, and

(ii) An amount equal to the maximum per line per month Access Recovery Charges calculated under paragraph (f)(4) of this section that would have been imputed on Consumer Broadband-Only Loop lines that receive support pursuant to § 54.901 of this chapter on the day preceding the detariffing multiplied by the projected demand for the period associated with the Eligible Recovery calculation, subject to the total imputation limit under paragraph (f)(5) of this section.

PART 54—UNIVERSAL SERVICE

■ 4. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004 and 1302, unless otherwise noted.

■ 5. Amend § 54.901 by revising paragraph (a) and adding paragraph (h) to read as follows:

§ 54.901 Calculation of Connect America Fund Broadband Loop Support.

(a) Subject to the requirements of paragraph (h) of this section, Connect America Fund Broadband Loop Support (CAF BLS) available to a rate-of-return carrier shall equal the Interstate Common Line Revenue Requirement per Study Area, plus the Consumer Broadband-Only Revenue Requirement per Study Area as calculated in accordance with part 69 of this chapter, minus: * * *

* * * * *

(h) In calculating support pursuant to paragraph (a) of this section, if a rate-of-return carrier is subject to detariffing pursuant to § 61.27 of this chapter, the values for paragraphs (a)(1) and (4) shall be as follows:

(1) The study area revenues obtained from end user common line charges shall be set at $6.50 per line per month for residential and single-line business lines and $9.20 per line per month for multi-line business lines;

(2) any line port costs in excess of basic analog service described in § 69.130 of this chapter being assessed on [the effective date of the order].

PART 61—TARIFFS

■ 6. The authority citation for part 61 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 403, unless otherwise noted.

■ 7. Add § 61.27 to read as follows:

§ 61.27 Detariffing of interstate end user access charges.

(a) An incumbent local exchange carrier as defined in § 51.5 of this chapter must detariff the charges listed in paragraph (b) on July 1, [insert year] or July 1, [insert year]

(b) The charges to be detariffed are:

(1) Access Recovery Charges as described in §§ 51.915(e) and 51.917(e) of this chapter;

(2) End-User Common Line charges as described in §§ 69.104 and 69.152 of this chapter;

(3) Line port costs in excess of basic analog service as described in §§ 69.130 and 69.157 of this chapter;

(4) Special Access Surcharge as described in § 69.115 of this chapter; and

(5) Presubscribed interexchange carrier charge assessed on end users as described in § 69.153 of this chapter.

(c) A competitive local exchange carrier must detariff any interstate charge listed in paragraph (b) of this section, or its equivalent, on July 1, [insert year] or July [insert year]

(d) A rate-of-return local exchange carrier participating in a National Exchange Carrier Association's interstate access tariff must remove its charges listed in paragraph (b) of this section from the tariff on the date the detariffing takes place. As of that date, the National Exchange Carrier Association may no longer pool any costs or revenues associated with detariffed offerings.

(e) Charges listed in paragraph (b) of this section shall not be subject to ex ante pricing regulation once detariffed.

PART 69—ACCESS CHARGES

■ 8. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

■ 9. Amend § 69.4 by revising paragraph (a) to read as follows:

§ 69.4 Charges to be filed.

(a) Except as provided in § 61.27 of this chapter, the end user charges for access service filed with this Commission shall include charges for the End User Common Line element, and for line port costs in excess of basic, analog service.

* * * * *

■ 10. Amend § 69.5 by revising paragraphs (a) and (c) to read as follows:

§ 69.5 Persons to be assessed.

(a) Except as provided in § 61.27 of this chapter, end user charges shall be computed and assessed upon public end users, and upon providers of public telephones, as defined in this subpart, and as provided in subpart B of this part.

* * * * *

(c) Except as provided in § 61.27 of this chapter, special access surcharges shall be assessed upon users of exchange facilities that interconnect these facilities with means of interstate or foreign telecommunications to the extent that carrier's carrier charges are not assessed upon such interconnected usage. As an interim measure pending the development of techniques accurately to measure such interconnected use and to assess such charges on a reasonable and non-discriminatory basis, telephone companies shall assess special access surcharges upon the closed ends of private line services and WATS services pursuant to the provisions of § 69.115 of this part.

* * * * *

[FR Doc. 2020–09810 Filed 5–20–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket No. 11–43; FCC 20–55; FRS 16708]

Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to expand its video description regulations by phasing them in for an additional 10 designated market areas (DMAs) each year for four years, beginning on January 1, 2021. The Commission also proposes to modernize the terminology in our regulations to use the term ''audio description'' rather than ''video description.'' Finally, it proposes to make a non-substantive edit to the video description rules, to delete outdated references to compliance deadlines that have passed.

DATES: Comments are due on or before June 22, 2020; reply comments are due on or before July 6, 2020.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 11–43, by any of the following methods:

- *Federal Communications Commission's website: http://apps.fcc.gov/ecfs.* Follow the instructions for submitting comments.
- *Mail:* Filings may be sent by commercial overnight mail, or by U.S. Postal Service first-class, Express, or Priority mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *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: For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 20–55, adopted on April 22, 2020 and released on April 23, 2020. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY–A257, Washington, DC 20554. The full text of this document will also be available via ECFS at *http://apps.fcc.gov/ecfs.* 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), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In the Notice of Proposed Rulemaking (*NPRM*), the Commission proposes to expand its video description regulations by phasing them in for an additional 10 designated market areas (DMAs) each year for four years, beginning on January 1, 2021. The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) directed the Commission to submit a report to Congress on October 8, 2019, assessing certain aspects of video description. The CVAA also provides that as of October 8, 2020, ''based upon the findings, conclusions, and recommendations'' contained in that report, the Commission has the authority to phase in the video description regulations for up to an additional 10 DMAs each year, if it determines that the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable.[1] Through this *NPRM,* the Commission invites comment on its proposal to phase in its video description regulations for an additional 10 DMAs each year for four years, including comments on whether the costs of such an expansion would be reasonable.[2] This proposed expansion would help ensure that a greater number of individuals who are blind or visually impaired can be connected, informed, and entertained by television programming.

2. In addition, we propose to modernize the terminology in part 79 of the Commission's regulations to use the term ''audio description'' rather than ''video description.'' While the CVAA uses the term ''video description,'' there appears to be wide support among consumer organizations and industry for the proposed change. The Commission invites comment on this proposal.

3. Video description[3] makes video programming[4] more accessible to individuals who are blind or visually impaired through ''[t]he insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.''[5] Video description is typically provided through the use of a secondary audio stream, which allows the consumer to choose whether to hear the narration by switching from the main program audio to the secondary audio. As required by section 202 of the CVAA, the Commission adopted rules in 2011 requiring certain television broadcast stations and multichannel video programming distributors (MVPDs) to provide video description for a portion of the video programming that they offer to consumers on television.

4. The current video description rules require commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC) and are located in the top 60 television markets to provide 50 hours of video-described programming per calendar quarter during prime time or on children's programming,[6] as well as

[1] Specifically, pursuant to the ''continuing Commission authority'' provision of the CVAA, the Commission has authority ''to phase in the video description regulations for up to an additional 10 [DMAs] each year (I) if the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.''

[2] In the Second Report, the Media Bureau (Bureau) indicated that it would issue a public notice in early 2020 ''to consider whether the costs of such an expansion would be reasonable.'' Rather than issue a public notice, we have decided to issue this *NPRM* containing specific proposals, which will similarly allow the Commission to develop a record on all relevant issues, including costs and benefits.

[3] We note that although the CVAA uses the term ''video description'' in this context, the Commission considers the terms ''video description'' and ''audio description'' to be synonymous and welcomes commenters to use either term to describe this service for purposes of this rulemaking proceeding.

[4] ''Video programming'' refers to programming provided by, or generally considered comparable to programming provided by, a television broadcast station but does not include consumer-generated media.

[5] 47 CFR 79.3(a)(3).

[6] On July 1, 2015, full-power affiliates of the top four television broadcast networks located in markets 26 through 60 became subject to the video

Continued

an additional 37.5 hours of video-described programming per calendar quarter at any time between 6 a.m. and midnight.[7] In addition, MVPD systems that serve 50,000 or more subscribers must provide 50 hours of video description per calendar quarter during prime time or on children's programming, as well as an additional 37.5 hours of video description per calendar quarter at any time between 6 a.m. and midnight, on each of the top five national nonbroadcast networks that they carry on those systems.[8] The top five nonbroadcast networks currently subject to the video description requirements are USA Network, HGTV, TBS, Discovery, and History.[9]

5. The CVAA required the Commission to submit two reports to Congress related to video description. In the First Report, submitted to Congress in June 2014, the Bureau found that ''[t]he availability of video description on television programming has provided substantial benefits for individuals who are blind or visually impaired, and the industry appears to have largely complied with their responsibilities under the Commission's 2011 rules.'' The Bureau also found, however, that ''consumers report the need for increased availability of and easier access to video-described programming, both on television and online.''

6. The CVAA required the Commission's Second Report to assess, among other topics, ''the potential costs to program owners, providers, and distributors in [DMAs] outside of the top 60 of creating [video-described] programming'' and ''the need for additional described programming in [DMAs] outside the top 60.'' The Bureau submitted the Second Report to Congress in October 2019. This report found that consumers who are blind or visually impaired derive significant benefits from the use of video description and, while it observed that there has been significant progress in the types and amount of video-described programming available over the past five years, it also noted that consumers would benefit from additional described programming. The Bureau observed that the record ''indicates that consumers seek expansion of the video description requirements to DMAs outside the top 60, and it provides no basis for concluding that consumers would benefit less from video description in those markets than in other areas.''

7. As to the information regarding the costs to program owners, providers, and distributors of creating video-described content, the Bureau reported in the Second Report that the maximum cost of creating video-described programming remains consistent with the Commission's 2017 estimate of $4,202.50 per hour, while the cost of described pre-recorded programming can be as low as $1,000 per hour. The Bureau also noted that, according to one industry commenter, ''costs should be manageable for network affiliates that receive programming via a network feed and simply pass through any video description.'' [10] This commenter further claimed that some stations ''could be forced 'to devote a substantial portion of their limited resources to compliance' '' and some might ''face significant expenditures, such as the purchase of additional equipment, to facilitate video description.'' [11] The Second Report also noted a consumer commenter's claim that ''passing through [an] audio stream that is already included on national broadcast network programming should not be burdensome, regardless of market, because the emergency information rules already require the use of the secondary audio stream.'' [12] In its summary, the Bureau stated that commenters did not offer ''detailed or conclusive information'' as to the costs of such an expansion or a station's ability to bear those costs. It thus deferred issuing a determination regarding whether any costs associated with the expansion would be reasonable, explaining that, ''[s]hould the Commission seek to expand the video description requirements to DMAs outside the top 60, it will need to utilize the information contained in this Second Report, and any further information available to it at the time, to determine that 'the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable.' '' [13]

8. *Expanding the Number of Markets Subject to Video Description Requirements.* We propose to phase in the video description requirements for an additional 10 DMAs each year for four years, beginning on January 1, 2021, and we invite comment on this proposal. As indicated in the Second Report, consumers seek expansion of the video description requirements to additional DMAs, and we believe our proposal will provide significant benefits to consumers who are blind or visually impaired and are located in DMAs 61 through 100. As stated, the CVAA provides the Commission with authority for this phase-in, ''based upon the findings, conclusions, and recommendations contained in the [Second Report],'' ''(I) if the costs of implementing the video description regulations to program owners, providers, and distributors in those additional markets are reasonable, as determined by the Commission; and (II) except that the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.'' We propose that any further expansion beyond DMA 100 would be undertaken only following a future determination of the reasonableness of the associated costs.

9. We tentatively conclude that the costs of implementing the video description regulations in markets 61 through 100 are reasonable. The Second

description requirements in addition to the top 25 markets already covered by the requirements.

[7] Covered broadcast stations became subject to the requirement to provide an additional 37.5 hours of video description as of the calendar quarter beginning on July 1, 2018. In addition, the rules require ''[t]elevision broadcast stations that are affiliated or otherwise associated with any television network [to] pass through video description when the network provides video description and the broadcast station has the technical capability necessary to pass through the video description, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description.'' 47 CFR 79.3(b)(3).

[8] For purposes of the video description rules, the top five national nonbroadcast networks include only those that reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime-time programming that is not live or near-live or otherwise exempt under the video description rules. The list of the top five networks is updated every three years based on changes in ratings and was last updated on July 1, 2018 (remaining in effect until June 30, 2021). Covered MVPDs became subject to the requirement to provide an additional 37.5 hours of video description as of the calendar quarter beginning on July 1, 2018. In addition, MVPD systems of any size must pass through video description provided by a broadcast station or nonbroadcast network, if the channel on which the MVPD distributes the station or programming has the technical capability necessary to do so and if that technology is not being used for another purpose related to the programming.

[9] On October 7, 2019, the Bureau released an order that grants a limited waiver of the video description rules with respect to USA Network for the remainder of the current ratings period ending on June 30, 2021, but it declined to grant a safe harbor from the video description requirements for other similarly situated, top 5 nonbroadcast networks. As a condition of the waiver, USA Network must air at least 1,000 hours of described programming each quarter without regard to the number of repeats and must describe at least 75 percent of any newly produced, non-live programming that is aired between 6:00 a.m. and midnight per quarter.

[10] Second Report at para. 27 (citing National Association of Broadcasters (NAB) Comments for Second Report).

[11] *Id.*

[12] *Id.* (citing Timothy Wynn (Wynn) Comments for Second Report).

[13] *Id.* at para. 28 (quoting 47 U.S.C. 613(f)(4)(C)(iv)(I)).

Report indicates that the costs of adding description to television programming have held steady since 2017. Costs thus remain at a level the Commission has previously considered ''minimal,'' relative to total programming expenses and network revenues, when it increased the required number of hours for described programming for commercial broadcast television stations affiliated with ABC, CBS, Fox, or NBC that are located in the top 60 television markets. Similarly, the record in the Second Report reflects that, for purposes of DMAs outside the top 60, ''costs should be manageable for network affiliates that receive programming via a network feed and simply pass through any video description.'' [14] We seek comment on this tentative conclusion.

10. We note that covered broadcasters are currently required to have the necessary equipment and infrastructure to deliver a secondary audio stream in order to provide timely, audible emergency information to consumers who are blind or visually impaired, without exception for technical capability or market size. Since video description is also provided via the secondary audio stream, we assume that broadcasters capable of compliance with the emergency information requirement also have the technical capability to comply with the video description requirements. We believe this supports our tentative conclusion that the costs of expanding the video description requirements to DMAs 61 through 100 would be ''reasonable.'' We seek comment on our analysis. The record gathered for the Second Report was not conclusive on other technical costs of providing video description, such as whether expenditures for any additional equipment might be necessary. Accordingly, we seek comment on this issue.

11. Further, we expect that the costs to program owners, providers, and distributors of providing video description in markets 61 through 100 are reasonable, and we invite comment on whether that is correct. Specifically, we invite comment on the costs of creating video-described programming for network affiliates in markets 61 through 100.[15] We note that the First Report concluded that the costs of complying with the video description requirements were consistent with industry's expectations at the time the rules were adopted and had not impeded industry's ability to comply, and the record for the Second Report did not alter that conclusion. We believe that the costs of providing video description in DMAs 61 through 100 are similar if not the same as the costs of providing video description in DMAs that are already subject to the requirements. For example, network affiliated stations outside of the top 60 DMAs currently provide a substantial amount of video-described programming due to their pass-through obligation. Thus, this mitigates the costs associated with the proposed rule expansion. The record for the Second Report indicates that ''compliance costs should be manageable for'' network affiliated broadcasters that ''typically receive programming via a network feed, and pass through the audio of any video described programming on their [secondary audio] channels, including some stations in markets below the top 60 that do so voluntarily.'' [16] We seek information on how the differing costs faced by network affiliates that receive programming via a network feed as compared to other network affiliates should impact our analysis. Are there any network affiliates in any DMA that do not receive programming via a network feed? [17] We assume that network affiliated stations in markets 61 through 100 would be able to satisfy the video description requirements entirely by using the programming they receive via a network feed. Is this assumption correct or would they incur costs to describe additional programming in order to meet the requirements? Are there differing costs incurred by stations owned by large station group owners as compared to smaller station group owners or single stations? Commenters should provide specific data on the costs that program owners, providers, and distributors would face if the Commission were to expand the video description requirements to an additional 10 DMAs each year, until all DMAs up to market 100 are covered. Would program owners and providers, as well as broadcast stations in DMAs 61 through 100, face additional costs as a result of the proposed expansion? If so, commenters should specify the nature and amount of those costs. Should we account for the current coronavirus pandemic in evaluating the reasonableness of costs of expanding video description requirements to markets 61 through 100, and if so, how?

12. In addition to information about costs, we also seek comment on the benefits of expanding the video description requirements to DMAs 61 through 100, including whether these benefits would outweigh any of the costs referenced above. In the Second Report, the Bureau described the record on this topic, which indicated that some video-described programming is available outside the top 60 DMAs but that consumers desire even more of such programming. It is indisputable that video description enhances the accessibility of video programming to consumers who are blind or visually impaired. Would expanding the video description requirements to DMAs 61 through 100 substantially increase the availability of video description to consumers in these areas, therefore providing a significant benefit to such consumers? Commenters should provide specific data on the amount of video-described programming currently available in DMAs 61 through 100, as compared to the amount that would be available if the Commission were to expand the video description requirements to such DMAs. We also invite commenters to specify the benefits that consumers in the DMAs at issue would derive from the proposed expansion.[18]

13. If the Commission determines that the costs of implementing the video description regulations to program owners, providers, and distributors in DMAs 61 through 100 are ''reasonable,'' we invite comment on the compliance deadline for the expansion of the video description requirements. While the CVAA provides us with authority to expand the video description regulations to an additional 10 DMAs per year beginning on October 8, 2020, we propose to expand the requirements to DMAs 61 through 70 as of January 1, 2021, to provide entities with sufficient

[14] *Id.* at para. 27.

[15] While there is no technical capability exception for network affiliated stations in covered DMAs, if commenters have information concerning broadcasters in markets 61 through 100 that are not technically capable of delivering a secondary audio stream, such information would be relevant to determining costs that these stations may incur as a result of this proceeding. We request that such information be presented in detail.

[16] NAB Comments for Second Report at 8.

[17] As noted above, all network affiliated stations, including those outside of the top 60 DMAs, are already required to ''pass through video description when the network provides video description and the broadcast station has the technical capability necessary to pass through the video description, unless it is using the technology used to provide video description for another purpose related to the programming that would conflict with providing the video description.'' 47 CFR 79.3(b)(3).

[18] Nielsen data from 2020 indicates that expanding the video description requirements to DMAs 61–70 on January 1, 2021 would cover more than an additional 4.22 million households, with more than an additional 3.63 million households by expanding to DMAs 71–80, more than an additional 3.25 million households by expanding to DMAs 81–90, and more than an additional 2.86 million households by expanding to DMAs 91–100. *See* MediaTracks Communications, Nielsen DMA Rankings 2020, available at *https://mediatracks.com/resources/nielsen-dma-rankings-2020/* (last visited Mar. 26, 2019).

time for compliance. We propose that these expansions would continue with an additional 10 DMAs per year, until the requirements are expanded to DMAs 91 through 100 on January 1, 2024. In 2023, the Commission will determine whether to continue expanding to an additional 10 DMAs per year, with any further expansion to be undertaken only following a future determination of the reasonableness of the associated costs. We invite comment on these proposals. Would stations within the first DMAs subject to the expansion (DMAs 61 through 70) have a sufficient amount of time to comply, or should we provide more time for the first compliance deadline? [19] We do not expect there to be any need to provide more time for any station in a DMA outside the first group subject to the expansion because stations in other DMAs will be fully aware of the applicable compliance deadlines well in advance. Should the current coronavirus pandemic affect our decision regarding the compliance deadline, and if so, how?

14. We propose that any extension of the rules to additional DMAs should be based on an updated Nielsen determination, as the Commission did when previously expanding the application of the rules from the top 25 to the top 60 markets, and we invite comment on this proposal. The video description rules currently apply to stations ''licensed to a community located in the top 60 DMAs, as determined by The Nielsen Company as of January 1, 2015.'' If we utilize updated Nielsen figures, should the updated figures apply to determine the top 60 markets? What should be the compliance deadline for stations in a DMA that was not in the top 60 markets as of January 1, 2015, but is within the top 60 markets as of January 1, 2020? We believe that using updated Nielsen data would facilitate the roll out of video description obligations to more television households more efficiently.

15. If the Commission expands the video description rules to additional DMAs, we propose that section 79.3(d) of the Commission's rules will govern any petitions for exemption due to economic burden. The video description rules permit covered entities to petition the Commission for a full or partial exemption from the requirements upon a showing that the requirements are economically burdensome.[20] The CVAA also provides that if an expansion of the video description rules to additional DMAs occurs, ''the Commission may grant waivers to entities in specific [DMAs] where it deems appropriate.'' Section 1.3 governs waivers of the Commission's rules generally. We tentatively conclude that §§ 79.3(d) and 1.3 provide a sufficient mechanism for entities seeking relief from any expansion of the video description rules to additional DMAs, and we invite comment on this conclusion.

16. Finally, we seek comment on whether there are any other issues with respect to our proposal to extend the video description rules to additional DMAs of which we should be aware.

17. *Modernizing Terminology.* Additionally, we propose to make a non-substantive amendment to the rules to substitute the term ''audio description'' for the term ''video description'' for purposes of part 79. Because the Commission's definition of video description already references both terms, our proposed modernization of terminology should not change the substance of any regulations. As early as 2011, in response to the Commission's Notice of Proposed Rulemaking, consumer and industry groups proposed using the term ''audio description'' instead of ''video description.'' Although the Commission previously sought comment on this proposal in its 2016 Notice of Proposed Rulemaking, the Commission has not yet resolved the matter. Recently, the Disability Advisory Committee (DAC) recommended that ''the Commission, as soon as practicable, use the term 'audio description' to refer to described video programs when discussing or listing audio described programming.'' The DAC points out that the term ''audio description'' is used by most federal agencies, and explains that consistency in terminology will help consumers and video providers avoid confusion. Indeed, our search to date has not revealed any other federal agency that uses the term ''video description.'' We are concerned that the use of inconsistent terms may cause confusion for consumers and industry. We recognize that terminology can become obsolete and, historically, agencies have made non-substantive modifications to regulations to reflect the newer terminology, even if the pertinent statute itself may not have been amended. We therefore seek to refresh the record on our proposal to revise our rules to reflect the newer and more commonly used terminology. Because the current definition in the Commission's rules treats the terms ''video description'' and ''audio description'' as synonymous, we propose to retain the statutory term ''video description'' in the definition while using the more commonly understood term ''audio description'' elsewhere in the rule. We invite comment on this proposal. We find that the Commission has authority to adopt update its terminology as proposed as part of its ''continuing authority'' to regulate video description. Updating the terminology does not implicate any limitation contained in the statute, nor does it make any substantive change to the rules. We invite comment on this analysis.

18. *Technical Update to the Rules.* Finally, we propose to make a non-substantive edit to the video description rules, to delete the outdated references in section 79.3(b)(1) and (4) to the compliance deadlines of July 1, 2015 and July 1, 2018, which have passed. We invite comment on this proposal.

19. *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) concerning the possible significant economic impact on small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*NPRM*). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the FNPRM. 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 summary, the *NPRM:* (1) Proposes to expand the video description regulations by phasing them in for an additional 10 DMAs each year for four years, beginning on January 1, 2021; (2) proposes to modernize the terminology in part 79 of the Commission's regulations to use the term ''audio description'' rather than ''video

[19] We recognize that when the Commission reinstated the video description rules in 2011, there were approximately 10 months between the release of the order and the compliance deadline.

[20] The term ''economically burdensome'' means imposing significant difficulty or expense, and the Commission considers the following factors in determining whether the requirements for video description would be economically burdensome: (i) The nature and cost of providing video description of the programming; (ii) the impact on the operation of the video programming provider; (iii) the financial resources of the video programming provider; and (iv) the type of operations of the video programming provider. In addition, the Commission considers any other factors the petitioner deems relevant to the determination and any available alternative that might constitute a reasonable substitute for the video description requirements, and it evaluates economic burden with regard to the individual outlet. In the First Report, the Bureau stated its belief ''that the ability to seek an exemption on the basis of economic burden should alleviate the potential for undue cost burdens on covered entities, particularly when the rules go into effect for broadcast stations in television markets ranked 26 through 60 in 2015.''

description''; and (3) proposes to make a non-substantive edit to the video description rules, to delete outdated references to compliance deadlines that have passed. The proposed action is authorized pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613. The types of small entities that may be affected by the proposals contained in the FNPRM fall within the following categories: Television Broadcasting, Wired Telecommunications Carriers, Cable and Other Subscription Programming, Cable Television Distribution Services, Cable Companies and Systems (Rate Regulation Standard), Cable System Operators (Telecommunications Act Standard), and Direct Broadcast Satellite (DBS) Service.

20. The projected reporting, recordkeeping, and other compliance requirements are: (1) Phasing in the existing video description requirements for an additional 10 DMAs each year, beginning on January 1, 2021 and continuing until January 1, 2024, with the extension based on an updated Nielsen determination; and (2) providing that section 79.3(d) of the Commission's rules will govern any petitions for exemption due to economic burden, with section 1.3 of the Commission's rules governing waivers of the Commission's rules generally. The Commission's proposal to update the term ''video description'' to ''audio description'' is a non-substantive change that will not cause any new or revised reporting, recordkeeping, or other compliance requirements that would be applicable to small entities. The same is true of its proposal to make a non-substantive edit to the video description rules to delete the outdated references in section 79.3(b)(1) and (4) to the compliance deadlines of July 1, 2015 and July 1, 2018, which have passed. There is no overlap with other regulations or laws. The extension to DMAs 61 through 100 would have a limited impact on small entities. The *NPRM* focuses on engaging in a cost-benefit analysis to determine the effects the expansion would have. Comments on the *NPRM* will help us determine whether the benefits of the expansion would indeed outweigh any costs. The Commission has attempted to minimize the impact of the rules on small entities, and it invites comment on alternative approaches.

21. *Paperwork Reduction Act.* This document contains proposed new or revised information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

22. *Ex Parte Rules—Permit-But-Disclose.* The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules.[21] Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

23. *Filing Requirements—Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

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 (March 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.

24. The proposed action is authorized pursuant to the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and the authority contained in Section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613.

[21] 47 CFR 1.1200 *et seq.*

List of Subjects in 47 CFR Part 79

Communications equipment, Television broadcasters.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 79 as follows:

PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING

■ 1. The authority citation for part 79 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310, 330, 544a, 613, 617.

■ 2. Amend § 79.2 by revising paragraph (b)(5) to read as follows:

§ 79.2 Accessibility of programming providing emergency information.

* * * * *

(b) * * *

(5) Video programming distributors and video programming providers must ensure that aural emergency information provided in accordance with paragraph (b)(2)(ii) of this section supersedes all other programming on the secondary audio stream, including audio description, foreign language translation, or duplication of the main audio stream, with each entity responsible only for its own actions or omissions in this regard.

* * * * *

■ 3. Amend § 79.3 by revising the heading and paragraphs (a)(3), (b) introductory text, (b)(1), (3) through (4), (5)(i) through (ii), (c)(2) through (3), (4)(i) through (ii), (5), (d)(1), (2) introductory text, (2)(i), (3), (10) through (11), (e)(1) introductory text, (3)(i) through (ii) to read as follows:

§ 79.3 Audio description of video programming.

(a) * * *

(3) Audio description/Video description. The insertion of audio narrated descriptions of a television program's key visual elements into natural pauses between the program's dialogue.

* * * * *

(b) The following video programming distributors must provide programming with audio description as follows:

(1) Commercial television broadcast stations that are affiliated with one of the top four commercial television broadcast networks (ABC, CBS, Fox, and NBC), and that are licensed to a community located in the top 60 DMAs, as determined by The Nielsen Company as of January 1, 2020, must provide 50 hours of audio description per calendar quarter, either during prime time or on children's programming, and 37.5 additional hours of audio description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each programming stream on which they carry one of the top four commercial television broadcast networks. If a previously unaffiliated station in one of these markets becomes affiliated with one of these networks, it must begin compliance with these requirements no later than three months after the affiliation agreement is finalized. On January 1, 2021, and each year thereafter until January 1, 2024, the requirements of this paragraph shall extend to the next 10 largest DMAs as determined by The Nielsen Company as of January 1, 2020;

* * * * *

(3) Television broadcast stations that are affiliated or otherwise associated with any television network must pass through audio description when the network provides audio description and the broadcast station has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description;

(4) Multichannel video programming distributor (MVPD) systems that serve 50,000 or more subscribers must provide 50 hours of audio description per calendar quarter during prime time or children's programming, and 37.5 additional hours of audio description per calendar quarter between 6 a.m. and 11:59 p.m. local time, on each channel on which they carry one of the top five national nonbroadcast networks, as defined by an average of the national audience share during prime time of nonbroadcast networks that reach 50 percent or more of MVPD households and have at least 50 hours per quarter of prime time programming that is not live or near-live or otherwise exempt under these rules. Initially, the top five networks are those determined by The Nielsen Company, for the time period October 2009–September 2010, and will update at three year intervals. The first update will be July 1, 2015, based on the ratings for the time period October 2013–September 2014; the second will be July 1, 2018, based on the ratings for the time period October 2016–September 2017; and so on; and

(5) * * *

(i) Must pass through audio description on each broadcast station they carry, when the broadcast station provides audio description, and the channel on which the MVPD distributes the programming of the broadcast station has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description; and

(ii) Must pass through audio description on each nonbroadcast network they carry, when the network provides audio description, and the channel on which the MVPD distributes the programming of the network has the technical capability necessary to pass through the audio description, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description.

(c) * * *

(2) In order to meet its quarterly requirement, a broadcaster or MVPD may count each program it airs with audio description no more than a total of two times on each channel on which it airs the program. A broadcaster or MVPD may count the second airing in the same or any one subsequent quarter. A broadcaster may only count programs aired on its primary broadcasting stream towards its quarterly requirement. A broadcaster carrying one of the top four commercial television broadcast networks on a secondary stream may count programs aired on that stream toward its quarterly requirement for that network only.

(3) Once a commercial television broadcast station as defined under paragraph (b)(1) of this section has aired a particular program with audio description, it is required to include audio description with all subsequent airings of that program on that same broadcast station, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description.

(4) * * *

(i) Has aired a particular program with audio description on a broadcast station it carries, it is required to include audio description with all subsequent airings of that program on that same broadcast station, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description; or

(ii) Has aired a particular program with audio description on a nonbroadcast network it carries, it is

required to include audio description with all subsequent airings of that program on that same nonbroadcast network, unless it is using the technology used to provide audio description for another purpose related to the programming that would conflict with providing the audio description.

(5) In evaluating whether a video programming distributor has complied with the requirement to provide video programming with audio description, the Commission will consider showings that any lack of audio description was de minimis and reasonable under the circumstances.

(d) * * *

(1) A video programming provider may petition the Commission for a full or partial exemption from the audio description requirements of this section, which the Commission may grant upon a finding that the requirements would be economically burdensome.

(2) The petitioner must support a petition for exemption with sufficient evidence to demonstrate that compliance with the requirements to provide programming with audio description would be economically burdensome. The term ''economically burdensome'' means imposing significant difficulty or expense. The Commission will consider the following factors when determining whether the requirements for audio description would be economically burdensome:

(i) The nature and cost of providing audio description of the programming;

* * * * *

(3) In addition to these factors, the petitioner must describe any other factors it deems relevant to the Commission's final determination and any available alternative that might constitute a reasonable substitute for the audio description requirements. The Commission will evaluate economic burden with regard to the individual outlet.

* * * * *

(10) The Commission may deny or approve, in whole or in part, a petition for an economic burden exemption from the audio description requirements.

(11) During the pendency of an economic burden determination, the Commission will consider the video programming subject to the request for exemption as exempt from the audio description requirements.

(e) * * *

(1) A complainant may file a complaint concerning an alleged violation of the audio description requirements of this section by transmitting it to the Consumer and Governmental Affairs Bureau at the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), email, audio-cassette recording, and braille, or some other method that would best accommodate the complainant's disability. Complaints should be addressed to: Consumer and Governmental Affairs Bureau, 445 12th Street SW, Washington, DC 20554. A complaint must include:

* * * * *

(3) * * *

(i) The Commission may rely on certifications from programming suppliers, including programming producers, programming owners, networks, syndicators and other distributors, to demonstrate compliance. The Commission will not hold the video programming distributor responsible for situations where a program source falsely certifies that programming that it delivered to the video programming distributor meets our audio description requirements if the video programming distributor is unaware that the certification is false. Appropriate action may be taken with respect to deliberate falsifications.

(ii) If the Commission finds that a video programming distributor has violated the audio description requirements of this section, it may impose penalties, including a requirement that the video programming distributor deliver video programming containing audio description in excess of its requirements.

* * * * *

■ 4. Amend § 79.105 by revising the heading and paragraphs (a)(1) and (b)(3)(i), to read as follows:

§ 79.105 Audio description and emergency information accessibility requirements for all apparatus.

(a) * * *

(1) The transmission and delivery of audio description services as required by § 79.3; and

* * * * *

(b) * * *

(3)(i) *Achievable.* Apparatus that use a picture screen of less than 13 inches in size must comply with the provisions of this section only if doing so is achievable as defined in this section. Manufacturers of apparatus that use a picture screen of less than 13 inches in size may petition the Commission for a full or partial exemption from the audio description and emergency information requirements of this section pursuant to § 1.41 of this chapter, which the Commission may grant upon a finding that the requirements of this section are not achievable, or may assert that such apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable.

* * * * *

■ 5. Amend § 79.106 by revising the heading and paragraph (b) to read as follows:

§ 79.106 Audio description and emergency information accessibility requirements for recording devices.

* * * * *

(b) All apparatus subject to this section must enable the presentation or the pass through of the secondary audio stream, which will facilitate the provision of audio description signals and emergency information (as that term is defined in § 79.2) such that viewers are able to activate and de-activate the audio description as the video programming is played back on a picture screen of any size.

* * * * *

■ 6. Amend § 79.107 by revising paragraph (a)(4)(viii) to read as follows:

§ 79.107 User interfaces provided by digital apparatus.

(a) * * *

(4) * * *

(viii) *Configuration—Audio Description Control.* Function that allows the user to enable or disable the output of audio description (*i.e.,* allows the user to change from the main audio to the secondary audio stream that contains audio description, and from the secondary audio stream back to the main audio).

* * * * *

■ 7. Amend § 79.108 by revising paragraph (a)(2)(vi) to read as follows:

§ 79.108 Video programming guides and menus provided by navigation devices.

(a) * * *

(2) * * *

(vi) Configuration—Audio Description Control. Function that allows the user to enable or disable the output of audio description (*i.e.,* allows the user to change from the main audio to the secondary audio stream that contains audio description, and from the secondary audio stream back to the main audio).

* * * * *

■ 8. Amend § 79.109 by revising paragraph (a)(2) to read as follows:

§ 79.109 Activating accessibility features.

(a) * * *

(2) Manufacturers of digital apparatus designed to receive or play back video programming transmitted in digital format simultaneously with sound,

including apparatus designed to receive or display video programming transmitted in digital format using internet protocol, with built-in audio description capability must ensure that audio description can be activated through a mechanism that is reasonably comparable to a button, key, or icon. Digital apparatus do not include navigation devices as defined in § 76.1200 of this chapter.

* * * * *

[FR Doc. 2020–09805 Filed 5–20–20; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 85, No. 99
Thursday, May 21, 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

Submission for OMB Review; Comment Request

May 18, 2020.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by June 22, 2020. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Current Agricultural Industrial Reports (CAIR).

OMB Control Number: 0535–0254.

Summary of Collection: The Current Agricultural Industrial Reports (CAIR) surveys have become an integral part of the Census of Agriculture and numerous other surveys conducted by NASS. Under the authority of the Census of Agriculture Act of 1997 (Pub. L. 105–113) and defined under Title 7, Sec. 2204(g), these surveys will be mandatory. The data from the CAIR surveys will supply data users with important information on the utilization of many of the crops, livestock, and poultry produced in the U.S.

Need and Use of the Information: Data from these surveys is essential to measuring the consumption of agricultural products in the production of numerous consumer goods. Agricultural products such as grain, oilseeds, fibers, and animal co-products is used in the creation of cooking oils, flour, lubricants, fuel, fabrics, soap, paint, methyl esters, resins, and numerous other products. The data are needed to provide a more complete picture of the importance of agriculture to the American population. Data from these instruments is published and publications are available to everyone at the same time on the NASS website.

Description of Respondents: Business or other for-profit.

Number of Respondents: 760.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 2,283.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–10961 Filed 5–20–20; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Forest Service

Helena-Lewis and Clark National Forest; Montana; Revision of the Land Management Plan for the Helena-Lewis and Clark National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of opportunity to object to the revised land management plan for the Helena-Lewis and Clark National Forest.

SUMMARY: The Forest Service is revising the Helena-Lewis and Clark National Forest's 1986 Land and Resource Management Plans. The Forest Service has prepared a final environmental impact statement (final EIS) for the revised land management plan, and a draft record of decision (ROD). This notice is to inform the public that a 60-day period is being initiated where individuals or entities with specific concerns about the Helena-Lewis and Clark National Forest's revised land management plan and associated final EIS may file objections for Forest Service review prior to approval of the revised land management plan. This is also an opportunity to object to the Regional Forester's list of species of conservation concern (SCC) for the Helena-Lewis and Clark National Forest.

DATES: The publication date of the legal notice in the Helena-Lewis and Clark National Forest's newspaper of record, the Helena Independent Record, initiates the 60-day objection period and is the exclusive means for calculating the time to file an objection (36 CFR 219.52(c)(5)). An electronic scan of the legal notice with the publication date will be posted at *www.fs.usda.gov/goto/hlc/forestplanrevision.*

ADDRESSES: The Helena-Lewis and Clark National Forest's revised land management plan, final EIS, draft ROD, and other supporting information will be available for review at: *www.fs.usda.gov/goto/hlc/forestplanrevision.* The Helena-Lewis and Clark National Forest's list of species of conservation concern and other supporting information will be available for review at: *http://bit.ly/NorthernRegion-SCC.* These web addresses include an objection template as an aid to providing the required information. Please be explicit as to whether the objection is for the land management plan or the species of conservation concern.

Electronic objections must be submitted to the Objection Reviewing Officer via the CARA objection webform at *https://cara.ecosystem-management.org/Public/CommentInput?project=44589.* Electronic submissions must be

submitted in a format (*e.g.,* Word, PDF, Rich Text) that is readable with optical character recognition software and be searchable.

The following address should be used for objections submitted by regular mail, private carrier, or hand delivery: Objection Reviewing Officer, USDA Forest Service, Northern Region, 26 Fort Missoula Road, Missoula, MT 59804. Office hours are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Objections can be faxed to the Objection Reviewing Officer at (406) 329–3411. The fax coversheet must include a subject line with ''Helena-Lewis and Clark Forest Plan Objection'' or ''Helena-Lewis and Clark Species of Conservation Concern'' and should specify the number of pages being submitted.

FOR FURTHER INFORMATION CONTACT: Project Leader, Deb Entwistle, 2880 Skyway Dr., Helena, MT 59602, (406) 449–5201.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. Additional information concerning the draft RODs may be obtained on the internet at the websites listed in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: The decision to approve the revised land management plan for the Helena-Lewis and Clark National Forest and the Regional Forester's identification of species of conservation concern will be subject to the objection process identified in 36 CFR part 219 subpart B (219.50 to 219.62). An objection must include the following (36 CFR 219.54(c)):

(1) The objector's name and address along with a telephone number or email address if available. In cases where no identifiable name is attached to an objection, the Forest Service will attempt to verify the identity of the objector to confirm objection eligibility;

(2) Signature or other verification of authorship upon request (a scanned signature for electronic mail may be filed with the objection);

(3) Identification of the lead objector, when multiple names are listed on an objection. The Forest Service will communicate to all parties to an objection through the lead objector. Verification of the identity of the lead objector must also be provided if requested;

(4) The name of the plan revision being objected to, and the name and title of the responsible official;

(5) A statement of the issues and/or parts of the plan revision to which the objection applies;

(6) A concise statement explaining the objection and suggesting how the proposed plan decision may be improved. If the objector believes that the plan revision is inconsistent with law, regulation, or policy, an explanation should be included;

(7) A statement that demonstrates the link between the objector's prior substantive formal comments and the content of the objection, unless the objection concerns an issue that arose after the opportunities for formal comment; and

(8) All documents referenced in the objection (a bibliography is not sufficient), except that the following need not be provided:

a. All or any part of a Federal law or regulation,

b. Forest Service Directive System documents and land management plans or other published Forest Service documents,

c. Documents referenced by the Forest Service in the planning documentation related to the proposal subject to objection, and

d. Formal comments previously provided to the Forest Service by the objector during the plan revision comment period.

It is the responsibility of the objector to ensure that the reviewing officer receives the objection in a timely manner. The regulations prohibit extending the length of the objection filing period.

Responsible Officials

The responsible official who will approve the record of decision for the Helena-Lewis and Clark National Forest revised land management plan is William Avey, Forest Supervisor for the Helena-Lewis and Clark National Forest. The responsible official for the identification of the species of conservation concern for the Helena-Lewis and Clark National Forest is Leanne Marten, Northern Region Regional Forester.

The Regional Forester is the reviewing officer for the revised land management plan since the Forest Supervisor is the deciding official (36 CFR 219.56(e)(2)). Objection review of the list of species of conservation concern will be subject to a separate objection process than the land management plan approval. The Chief of the Forest Service is the reviewing officer for the list of species of conservation concern as the Regional Forester is the responsbile official (36 CFR 219.56(e)(2)).

Allen Rowley,

Associate Deputy Chief, National Forest System.

[FR Doc. 2020–10957 Filed 5–20–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tri-County Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tri-County Resource Advisory Committee (RAC) will hold a virtual meeting. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information and virtual meeting information can be found at the following website: *https://www.fs.usda.gov/main/bdnf/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Thursday, June 4, 2020, at 1:00 p.m. (MDT).

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held virtually. For virtual meeting informaiton, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Beaverhead-Deerlodge National Forest Supervisor's Office. Please call ahead to facilitate that inspection.

FOR FURTHER INFORMATION CONTACT: Jeanne Dawson, RAC Coordinator, by phone at 406–683–3987 or by email at *jeanne.dawson@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Introduce the new RAC members;
2. Elect a RAC Chairperson;
3. Discuss and determine if the RAC will recommend fee change proposals for developed recreation sites on National Forest lands;
4. Discuss and determine whether RAC funds will be used to fund committee members' travel costs to the public meetings; and
5. Discuss and recommend new Title II projects.

This meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Monday, May 18, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments, requests for time for oral comments or requests for instructions to participate virtually must be sent to Jeanne Dawson, RAC Coordinator, 420 Barrett Street, Dillon, Montana 59725; by email to *jeanne.dawson@usda.gov* or by phone at 406–683–3987.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Cikena Reid,

Committee Management Officer.

[FR Doc. 2020–10911 Filed 5–20–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Collaborative Forest Landscape Restoration Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Collaborative Forest Landscape Restoration Advisory Committee (Committee) will hold a virtual meeting. The committee is authorized under Title IV of Omnibus Public Land Management Act of 2009. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Secretary of Agriculture (Secretary) on the selection of collaborative forest landscape restoration proposals as provided in Section 8629 of the Agriculture Improvement Act of 2018. Committee information can be found at the following website: *https://www.fs.fed.us/restoration/CFLRP/advisory-panel.shtml.*

DATES: The meeting will be held on June 22–26, 2020, with exact times on the website listed under **SUMMARY**.

All meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held with virtual attendance only. For virtual meeting information, please see website listed under **SUMMARY**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the USDA Forest Service Washngton Office Yates Buidling. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jessica Robertson, Designated Federal Officer, by phone at 202–302–1193 or via email at *jessica.robertson@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Evaluate 2020 Collaborative Forest Landscape Restoration Program proposals, and
2. Provide recommendations to the Secretary of Agriculture on proposal selection for funding.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 15, 2020, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Jessica Robertson, Integrated Restoration Coordinator, 201 14th Street Southwest, Washington, Distict of Columbia 20240; or by email to *jessica.robertson@usda.gov.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Dated: May 18, 2020.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–10995 Filed 5–20–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet in Petersburg, Alaska and Wrangell, Alaska. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *Wrangell-Petersburg RAC.*

DATES: The meeting will be held on Tuesday and Wednesday, June 2 and 3, 2020, from 6:30 p.m. to 9:00 p.m. each night, or until business is concluded.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held virtually and by teleconference.

Interested persons may attend by teleconference. For anyone who would like to attend by teleconference, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Petersburg Ranger District Office or the Wrangell Ranger District Office, Monday through Friday at 8:00 a.m. to 4:30 p.m. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Linda Slaght, RAC Coordinator, by phone at 907–772–5948 or via email at *linda.slaght@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review progress of previously funded projects;

2. Review new project proposals; and

3. Make recommendations for allocation of Title II funding to projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by Friday, May 15, 2020 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments may be sent to Linda Slaght, RAC Coordinator, P.O. Box 1328, Petersburg, Alaska 99833; by email to *linda.slaght@usda.gov* or via facsimile to 907–772–5995.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case-by-case basis.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2020–10916 Filed 5–20–20; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board [B–30–2020]

Foreign-Trade Zone (FTZ) 183—Austin, Texas, Notification of Proposed Production Activity, Rohr, Inc., (Aircraft Engine Parts), San Marcos, Texas

Rohr, Inc. (Rohr) submitted a notification of proposed production activity to the FTZ Board for its facility in San Marcos, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 8, 2020.

The applicant indicates that it will be submitting a separate application for FTZ designation at the company's facility under FTZ 183. The facility is used for the production of aircraft engine parts. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Rohr from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Rohr would be able to choose the duty rate during customs entry procedures that applies to parts of turbofan engine exhaust systems (kits, nozzles, center body assemblies) and parts of nacelles (fan cowl doors, thrust reverser translating sleeves, inlet cowls, thrust reversers) (duty-free). Rohr would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Stainless steel spacers; articles of nickel alloy (bolts, bushings, shear pins, spacers, washers, bolt retainers, end caps); nickel alloy fastener sets (consisting of nuts, bolts, washers, and fastener retainers); titanium link arms; titanium link pin retainers; exhaust nozzle components (attachment rings, closeout rings, flanges, frames, rings, stiffener rings); fan cowl longerons; fan cowl panels; inlet cowl panels; and, translating sleeve components (access panels, fairing sliders, panels, pressure shells) (duty rate ranges from duty-free to 3.5%). The request indicates that certain materials/components are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 30, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: May 18, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–10983 Filed 5–20–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–31–2020]

Foreign-Trade Zone (FTZ) 82—Mobile, Alabama; Notification of Proposed Production Activity, Rohr, Inc., (Aircraft Engine Parts), Foley and Loxley, Alabama

Rohr, Inc. (Rohr) submitted a notification of proposed production activity to the FTZ Board for its facilities in Foley and Loxley, Alabama. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 8, 2020.

The Rohr facilities are located within Subzone 82J. The facilities are used for the production of aircraft engine parts. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Rohr from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Rohr would be able to choose the duty rate during customs entry procedures that applies to parts of turbofan engine exhaust systems (kits, nozzles, center body assemblies) and parts of nacelles (fan cowl doors, thrust

reverser translating sleeves, inlet cowls, thrust reversers) (duty-free). Rohr would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Stainless steel spacers; articles of nickel alloy (bolts, bushings, shear pins, spacers, washers, bolt retainers, end caps); nickel alloy fastener sets (consisting of nuts, bolts, washers, and fastener retainers); titanium link arms; titanium link pin retainers; exhaust nozzle components (attachment rings, closeout rings, flanges, frames, rings, stiffener rings); fan cowl longerons; fan cowl panels; inlet cowl panels; and, translating sleeve components (access panels, fairing sliders, panels, pressure shells) (duty rate ranges from duty-free to 3.5%). The request indicates that certain materials/components are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is June 30, 2020.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: May 18, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–10984 Filed 5–20–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–86–2020]

Foreign-Trade Zone 143—Sacramento, California; Application for Subzone, LiCAP Technologies, Sacramento, California

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Sacramento, grantee of FTZ 143, requesting subzone status for the facility of LiCAP Technologies (LiCAP), located in Sacramento, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 15, 2020.

The proposed subzone (1.5 acres) is located at 9795 Business Park Dr., Sacramento, California. A notification of proposed production activity has been submitted and is being processed under 15 CFR 400.37 (Doc. B–27–2020). The proposed subzone would be subject to the existing activation limit of FTZ 143.

In accordance with the Board's regulations, Qahira El-Amin of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 30, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 15, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Qahira El-Amin at *Qahira.El-Amin@trade.gov* or (202) 482–5928.

Dated: May 18, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–10985 Filed 5–20–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA181]

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) Salmon Advisory Subpanel (SAS) will host an online meeting to discuss and develop statements related to topics on the Pacific Council's June 2020 meeting agenda. This meeting is open to the public.

DATES: The meeting will be held Monday, June 8, 2020, from 1:30 p.m. until 3:30 p.m., Pacific Daylight Time, or until business is complete.

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: Robin Ehlke, Staff Officer, Pacific Council; telephone: (503) 820–2410; email: *robin.ehlke@noaa.gov.*

SUPPLEMENTARY INFORMATION: Major topics include, but are not limited to salmon related topics: Southern Oregon/Northern California Coast Coho Environmental Species Act consultation update; Southern Resident Killer Whale consultation update; and the Salmon Fishery Management Plan Amendment 20: Annual Management Schedule and Boundary Change Range of Alternatives and Preliminary Preferred Alternatives. The group may also address one or more of the Pacific Council's scheduled administrative matters, habitat issues, groundfish, and future workload planning topics. Public comments during the online meeting will be received from attendees at the discretion of the SAS Chair.

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 18, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–11006 Filed 5–20–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR075]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Offshore Wind Construction Activities Off of Virginia

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Virginia Electric and Power Company, d/b/a Dominion Energy Virginia (Dominion), to incidentally harass, by Level B harassment only, marine mammals during construction activities off the coast of Virginia in the area of Research Lease of Submerged Lands for Renewable Energy Activities on the Outer Continental Shelf (OCS) Offshore Virginia (Lease No. OCS–A–0497), in support of the Coastal Virginia Offshore Wind (CVOW) Project.

DATES: This authorization is valid for one year from the date of issuance.

FOR FURTHER INFORMATION CONTACT: Jordan Carduner, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the applications and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the internet at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On September 13, 2019, NMFS received a request from Dominion for an IHA to take marine mammals incidental to construction activities off the coast of Virginia in the area of Research Lease of Submerged Lands for Renewable Energy Activities on the Outer Continental Shelf (OCS) Offshore Virginia (Lease No. OCS–A–0497) in support of the CVOW project. A revised application was received on January 21, 2020. NMFS deemed that request to be adequate and complete. Dominion's request is for the take of seven marine mammal species by Level B harassment that would occur over the course of two days of in-water construction. Neither Dominion nor NMFS expects serious injury or mortality to result from this activity and the activity is expected to last no more than one year, therefore, an IHA is appropriate.

Description of Activity

Overview

The CVOW Project (the Project) calls for development of two 6-megawatt wind turbines on a site leased by the Virginia Department of Mines Minerals and Energy (DMME). Dominion has an agreement with DMME to build and operate the two turbines within the 2,135-acre site, which lies 27 miles (mi) off the coast of Virginia Beach, Virginia. Dominion has contracted with Ørsted for construction of the two turbines. The goals of the Project are to provide electricity to Virginia and to inform plans for a future large-scale commercial offshore wind development in the adjacent Virginia Wind Energy Area that is also leased by Dominion.

Dominion proposes to conduct in-water construction activities in the area of Research Lease of Submerged Lands for Renewable Energy Activities on the OCS Offshore Virginia (Lease No. OCS–A–0497) (the Lease Area; see Figure 1–1 in the IHA application), as well as cable-lay and marine site characterization surveys along a 27-mile (mi) submarine cable corridor to a landfall location in Virginia, in support of the Project. The objective of the construction activities is to support installation of the wind turbine generator (WTG) foundations.

Construction activities are expected to occur during two days and could occur any time between May and October, 2020. Cable-lay and site characterization survey activities could occur for up to three months between May and October, 2020. Dominion's activities would occur in the Northwest Atlantic Ocean within Federal and state waters. Construction activities would occur within the Lease Area approximately 27 miles offshore Virginia (see Figure 1–1 in the IHA application) while cable-lay and site characterization survey activities would occur between the Lease Area and a landfall location in Virginia. As described in the notice of proposed IHA (85 FR 14901; March 16, 2020) NMFS has determined the likelihood of cable lay activities and HRG surveys associated with the construction of the project resulting in harassment of marine mammals to be so low as to be discountable; therefore, cable lay activities and HRG surveys associated with the construction of the project are not analyzed further in this document.

In-water construction activities would entail pile driving to support installation of two WTG foundations. The monopiles would have a 7.8 meter (m) (26 feet (ft)) diameter at the seafloor and 6 m (20 ft) diameter flange. The two monopiles would be 63 and 64 m (207 and 210 ft) in length. One monopile would be driven at a time and a maximum of one pile would be driven per day. As described in the notice of proposed IHA (85 FR 14901; March 16, 2020) NMFS has determined that pile driving associated with construction of

the WTG foundations has the potential to result in the take of marine mammals by Level B harassment.

A detailed description of Dominion's planned activities is provided in the notice of proposed IHA (85 FR 14901; March 16, 2020). Since that time, no changes have been made to the activities. Therefore, a detailed description is not provided here. Please refer to that notice for the detailed description of the specified activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting below).

Comments and Responses

A notice of proposed IHA was published in the **Federal Register** on March 16, 2020 (85 FR 14901). During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission) and a group of non-governmental organizations (NGOs) including Southern Environmental Law Center, Natural Resources Defense Council, National Wildlife Federation, Conservation Law Foundation, Defenders of Wildlife, Whale and Dolphin Conservation, Surfrider Foundation, Sierra Club Virginia Chapter, Assateague Coastal Trust, NY4WHALES, Inland Ocean Coalition, and Ocean Conservation Research. NMFS has posted the comments online at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* Please see those letters for full detail regarding the commenters' recommendations and underlying rationale.

Comment 1. The NGOs asserted that the proposed mitigation measures for noise attenuation are insufficient and do not comply with the MMPA's requirement to achieve the ''least practicable adverse impact'' to affected marine mammal populations, and that NMFS should require further mitigation of pile driving noise including noise attenuation at the pile itself, such as through pile casings or dampers.

Response: NMFS disagrees with the assertion that the proposed mitigation measures do not comply with the MMPA's requirement to achieve the least practicable adverse impact to affected marine mammal populations. The commenter's position is based on an assumption that the only way to achieve the least practicable adverse impact on affected marine mammal populations through this IHA is to require noise attenuation on both piles planned for installation by Dominion. NMFS does not agree with this assumption. We note that the proposal to drive one pile with an active noise attenuation system (*i.e.* a double bubble curtain) and to drive the second pile with no attenuation was proposed by Dominion with the goal of improving the overall understanding of the effectiveness of double bubble curtains in attenuation of pile driving noise. Data on the effectiveness of the attenuation method will be gathered via acoustic monitoring during the driving of both piles (one with the active double bubble curtain and the other with no attenuation) and this data will then be made available to both NMFS and the Bureau of Ocean Energy Management (BOEM) as well as the public. Thus, the driving of one pile without attenuation, and the acoustic measurements of the driving of both piles, are fundamental components of the applicant's proposed action. To prevent Dominion from undertaking this study would therefore be impracticable for Dominion, as it would preclude them from accomplishing one of the purposes of the project, and would therefore not result in the least practicable impact.

We note that differences in modeled marine mammal exposure numbers between one pile driven with 6 dB attenuation (assumed to be the effective attenuation level achieved from the double bubble curtain) compared with modeled exposure numbers for one pile driven with no attenuation are minimal (Table 6); therefore, the potential conservation benefit from precluding Dominion from undertaking this study would be minimal. Thus, a requirement to apply noise attenuation to both piles would result in a very minor potential benefit to marine mammals, but would prevent the applicant from collecting very valuable information regarding the effectiveness of bubble curtains, and is therefore impracticable.

The data gathered through this study also has the potential to minimize overall impacts on marine mammal populations through improved mitigation and monitoring measures. There is still much to be learned regarding the effectiveness of bubble curtains, especially in offshore environments off the Atlantic coast in the U.S. where virtually none of this type of pile driving has occurred thus far. The acoustic monitoring of both piles, as required in this IHA, will provide NMFS with data that will inform mitigation measures in numerous future authorizations for activities that are expected to be much more impactful to marine mammals than the activity considered here (including a planned commercial-scale project by Dominion in the same geographic area as this IHA that would entail up to 200 planned wind turbine generators). We expect the data gathered from this project will lead to more effective mitigation. More effective mitigation will likely result in lesser overall impacts from expected offshore wind construction. Thus, the data to be collected by Dominion is indeed very valuable, and that information cannot be collected if both piles are treated with bubble curtains as the commenters proposed.

Regarding the commenters recommendation that NMFS require the use of additional noise attenuation devices such as pile casings or dampers, while NMFS is supportive of the use of these attenuation devices, a requirement for additional attenuation devices is not necessary in this particular case as the applicant has demonstrated that the targeted level of attenuation can be achieved through deployment of the proposed double bubble curtain (see the IHA application under Section 2.3 ''Pile Driving''). The application of a double bubble curtain on one pile, in concert with the other mitigation measures required during pile driving including PSOs, pre-clearance, and delay and shutdown upon observation of marine mammals, will ensure the least practicable adverse impact on marine mammal species or stocks and their habitat.

Comment 2. The NGOs commented that NMFS should reassess its acoustic thresholds and criticized NMFS's use of the 160-dB rms Level B harassment threshold, stating that the threshold is based on outdated information and that current research shows that behavioral impacts can occur at levels below the threshold.

Response: NMFS acknowledges that the 160-dB rms step-function approach is simplistic, and that an approach reflecting a more complex probabilistic function may more effectively represent the known variation in responses at different levels due to differences in the receivers, the context of the exposure, and other factors. The commenters suggested that our use of the 160-dB threshold implies that we do not recognize the science indicating that animals may react in ways constituting behavioral harassment when exposed to lower received levels. However, we do recognize the potential for Level B harassment at exposures to received levels below 160 dB rms, in addition to the potential that animals exposed to received levels above 160 dB rms will not respond in ways constituting behavioral harassment. These comments appear to evidence a misconception regarding the concept of the 160-dB

threshold. While it is correct that in practice it works as a step-function, *i.e.,* animals exposed to received levels above the threshold are considered to be ''taken'' and those exposed to levels below the threshold are not, it is in fact intended as a sort of mid-point of likely behavioral responses (which are extremely complex depending on many factors including species, noise source, individual experience, and behavioral context). What this means is that, conceptually, the function recognizes that some animals exposed to levels below the threshold will in fact react in ways that are appropriately considered take, while others that are exposed to levels above the threshold will not. Use of the 160-dB threshold allows for a simplistic quantitative estimate of take, while we can qualitatively address the variation in responses across different received levels in our discussion and analysis.

As behavioral responses to sound depend on the context in which an animal receives the sound, including the animal's behavioral mode when it hears sounds, prior experience, additional biological factors, and other contextual factors, defining sound levels that disrupt behavioral patterns is extremely difficult. Even experts have not previously been able to suggest specific new criteria due to these difficulties (*e.g.,* Southall et al. 2007; Gomez et al., 2016).

Comment 3. The NGOs commented that NMFS should consider data from state monitoring efforts, passive acoustic monitoring data, opportunistic marine mammal sightings, and other data sources in modeling marine mammal exposure estimates.

Response: NMFS has used the best available scientific information—in this case the marine mammal density models developed by the Duke University Marine Geospatial Ecology Lab (MGEL) (Roberts et al., 2016, 2017, 2018)—to inform our determinations. The commenters cite four alternate sources and recommend that NMFS incorporate information from these sources in modeling marine mammal exposure estimates, stating ''the density maps produced by the Roberts et al. model do not fully reflect the abundance, distribution, and density of marine mammals for the U.S. East Coast.'' The first source cited by the commenters is a report by the Virginia Aquarium & Marine Science Center that summarizes aerial survey data in the Virginia Wind Energy Area from 2012–2015 (Mallette et al, 2016). However, a review of the most recent report on updates to the Duke MGEL density models (Roberts et al, 2018) shows that the aerial sightings data from the Virginia Aquarium & Marine Science Center report have in fact been incorporated into the Duke MGEL density models used to model exposures in this IHA. The second and third sources cited by the commenters summarize North Atlantic right whale passive acoustic monitoring (PAM) data in Virginia and elsewhere along the Atlantic coast. While NMFS agrees that these papers provide valuable information on right whale presence and habitat use in and near the project area, they do not provide density data that can readily be incorporated into exposure models and the commenters do not provide any recommendations as to how this PAM data would be incorporated into exposure estimates. The fourth source cited by the commenters is an article in the popular press about fishermen disentangling a North Atlantic right whale 50 miles offshore Virginia in 2013; the commenters do not provide a recommendation as to how an anecdotal report of a single right whale off Virginia in 2013 would be incorporated into marine mammal exposure estimates.

The commenters also incorrectly state that, for large whales, NMFS ''entirely dismiss[ed] the possibility of take based on a purported lack of presence'' for large whales. In fact, as described in the notice of proposed IHA, the potential for take of large whales to occur as a result of the project was ruled out because of very low densities in the project area. The potential for large whale take was analyzed in the same manner as all marine mammal species that may occur in the project area; that is, the proposed authorized take numbers were based on marine mammal exposure modeling, which incorporated the best available density data, followed by additional qualitative evaluation. This density data includes all marine mammal species that may be present in the project area, including blue, fin, sei, humpback, minke, sperm and North Atlantic right whales (Roberts et al., 2016, 2017, 2018). The exposure modeling that incorporated the density data for these species resulted in estimates of zero takes for all large whale species. This was the first step in the analysis, which indicated that take of these species is unlikely. The addition of required mitigation and monitoring measures further reduces the likelihood of take. We therefore determined, based on the best available information, that take of these species was not expected to occur.

Comment 4. The NGOs commented that NMFS should acknowledge the potential for take that may occur incidental to HRG surveys, cable laying, and vessel collisions. The NGOs also recommended that NMFS authorize take by Level A harassment of harbor porpoises because the agency has authorized Level A harassment for this species in some previous authorizations for HRG surveys.

Response: NMFS acknowledged the general potential for HRG surveys, cable laying, and vessel collisions to result in the take of marine mammals in the notice of proposed IHA (85 FR 14901; March 16, 2020) but explained why the take of marine mammals is not anticipated as a result of these activities. Rather than repeating those explanations here, we refer the reader to the notice of proposed IHA under Detailed Description of the Specified Activities. Regarding the commenters' recommendation that take by Level A harassment be authorized for harbor porpoises, the reasoning behind our authorization of Level A harassment take for harbor porpoises in certain previous IHAs for HRG survey activities was based on the fact that modeling results for those previous authorizations resulted in Level A harassment numbers that exceeded 0. In this instance, exposure modeling resulted in an estimate of 0 Level A harassment takes for harbor porpoises (and all marine mammal species) thus we do not expect Level A harassment to occur and we do not authorize the take by Level A harassment of harbor porpoises as recommended by the commenters.

We further note that the commenters have incorrectly stated that NMFS based its zero take conclusion for HRG surveys ''in part on mitigation measures that are under-protective—and in some cases nonexistent.'' However, the notice of proposed IHA (85 FR 14901; March 16, 2020) clearly stated that NMFS determined the HRG surveys proposed by Dominion are not likely to result in take not because of proposed mitigation measures but because of the frequencies and modeled acoustic propagation of the HRG equipment planned for use by Dominion. Rather than repeating the reasoning behind this determination here, we refer the reader to the notice of proposed IHA under Detailed Description of the Specified Activities.

Comment 5. The NGOs asserted that the required mitigation and monitoring protocols are insufficient in protecting marine mammals and do not comply with the MMPA and recommended that NMFS require additional mitigation measures, including the following, which we respond to in turn:

- For HRG surveys: Surveys should commence during daylight hours only; at least one observer or two observers if

feasible to monitor clearance zones for HRG surveys; a 500 m clearance zone for NARW, and, to the extent feasible, a 1,000 m clearance zone for NARW, including a delay or shut down if a right whale is observed within 1,000 meters from the source.

Response: Regarding the commenters suggestion that HRG surveys should commence during daylight hours only, NMFS acknowledges the limitations inherent in detection of marine mammals at night. However, in this case no harassment (either Level A or Level B) is expected to result from the planned HRG surveys even in the absence of mitigation, given the very small estimated Level A and Level B harassment zones. Restricting surveys in the manner suggested by the commenters would not result in any significant reduction in either intensity or duration of noise exposure. Incorporating this measure would also have the unintended result of extending the overall duration of HRG surveys, thereby resulting in vessels being on the water for an extended period of time. Thus the commenters have not demonstrated that such a requirement would result in a net benefit. In consideration of potential effectiveness of the recommended measure and its practicability for the applicant, NMFS has determined that restricting survey start-ups to daylight hours is not warranted or practicable in this case.

Regarding the commenters recommendation for a 500 m or 1,000 m clearance zone for NARW and a requirement for a delay or shut down if a right whale is observed within 1,000 m, NMFS does not expect take to result from the HRG surveys as proposed by Dominion even in the absence of mitigation measures. The HRG equipment planned for use during Dominion's surveys that operates below 180 kHz would be limited to a Ultra Short Baseline (USBL), which has a modeled Level B harassment zone of less than 25 m, would only be operated when the survey vessel moves at a maximum of 1.5 knots, and which has a beam that is pointed directly downward toward the seabed with a 90 degree beam. Therefore we have determined that the potential conservation benefit from a 500 m or 1,000 m exclusion zone on these activities would be minimal and therefore a requirement for a 500 m or 1,000 m exclusion zone is not warranted. The commenters do not provide any meaningful rationale for the recommendation.

Regarding the commenters recommendation for a required PSO or PSOs during HRG surveys, as described above, NMFS does not expect take to result from the HRG surveys as proposed by Dominion even in the absence of mitigation measures, and the HRG equipment planned for use during Dominion's surveys that operates below 180 kHz would be limited to a USBL, which has a modeled Level B harassment zone of less than 25 m, would be operated only when the survey vessel moves at a maximum of 1.5 knots, and has a beam that is pointed directly downward toward the seabed with a 90 degree beam. When balancing the potential conservation benefit from a requirement for a PSO (or PSOs) with the costs and logistical challenges associated with a requirement to deploy PSOs on the survey vessel, especially during the current public health crisis associated with the COVID–19 pandemic, we have determined a requirement for PSOs during HRG surveys is not warranted.

- A pre-clearance observation period of 60 minutes (versus 30 minutes as proposed in the notice of proposed IHA) prior to beginning or resuming pile driving.

Response: NMFS agrees with the commenters that a pre-clearance observation period of 60 minutes is warranted in this particular situation and is practicable for Dominion to implement and we have incorporated this requirement in the final IHA.

- All activities, including cable-lay and HRG survey activities, should be completed between May and October 2020 due to increased presence of NARW from November 1 through April 30.

Response: NMFS does not expect take to result from the HRG surveys or cable-lay activities as proposed by Dominion even in the absence of mitigation measures, therefore we have determined that the potential conservation benefit from a seasonal restriction on these activities would be minimal and do not agree that a requirement for a seasonal restriction on these activities is warranted. The commenters do not provide adequate support for assertions of potential harm from these activities.

- PAM should be required during pile-driving activity and HRG surveys.

Response: While NMFS agrees that PAM can be a useful tool for augmenting detection capabilities under certain circumstances, there are costs and logistical challenges associated with PAM deployment. Thus, the decision as to whether or not to require PAM as a monitoring or mitigation measure requires a consideration of the potential benefits of PAM specific to the activity and the expected impacts of the activity on marine mammals.

In the case of Dominion's planned pile driving activity, the potential impacts to marine mammals are relatively minor: The total duration of pile driving is very brief (*i.e.* an expected total duration of approximately four hours of pile driving for the entire project). In addition, expected marine mammal exposures would be by Level B harassment only, and authorized takes by Level B harassment are very low for all species (Table 7). PAM is only capable of detecting marine mammals that are actively vocalizing, while many marine mammal species vocalize infrequently or only during certain activities, which means that only a subset of the animals within the range of the PAM system would be detected. Additionally, localization and range detection can be challenging depending on the species, configuration of the PAM system, and the expertise of the PAM observer. For example, odontocetes are fast moving and often travel in large or dispersed groups which makes localization difficult. Taking the above factors into consideration, and weighing the potential conservation benefits of a requirement for PAM against the costs and logistical challenges associated with PAM deployment, we have determined that the requirements for visual monitoring as proposed in the notice of proposed IHA (85 FR 14901; March 16, 2020) are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat and a requirement for PAM is not warranted for Dominion's planned pile driving activities.

Regarding the commenters recommendation for a PAM requirement during HRG surveys, the potential impacts to marine mammals associated with Dominion's planned HRG surveys are minor: the area expected to be ensonified above the Level B harassment threshold is extremely small (less than 25 m to the Level B harassment threshold for the dominant source in terms of acoustic propagation), and no takes by Level B harassment associated with HRG surveys are expected or authorized. The limitations of PAM during HRG surveys include those described above, though the logistical challenges associated with localization of marine mammals is even greater as the vessel (and the PAM system) are mobile. In addition, the ability of PAM to detect baleen whale vocalizations is further limited during HRG surveys due to being deployed from the stern of a vessel, which puts the PAM hydrophones in proximity to propeller noise and low frequency

engine noise which can mask the low frequency sounds emitted by baleen whales, including right whales. Taking the above factors into consideration, and weighing the potential conservation benefits of a requirement for PAM against the costs and logistical challenges associated with PAM deployment, we have determined that the current requirements for visual monitoring as proposed in the notice of proposed IHA (85 FR 14901; March 16, 2020) are sufficient to ensure the least practicable adverse impact on the affected species or stocks and their habitat and a requirement for PAM is not warranted for Dominion's planned HRG survey activities.

• All project vessels operating within the Project Area, including survey and support vessels, should maintain a speed of 10 knots or less during the entire period covered by the IHA.

Response: NMFS has analyzed the potential for vessel strike resulting from Dominion's activity and has determined that the mitigation measures specific to vessel strike avoidance are sufficient to avoid the potential for vessel strike. These include the following requirements: All vessels must comply with 10 knot or less speed restrictions in any Seasonal Management Area (SMA) or Dynamic Management Area (DMA); all vessels must reduce vessel speed to 10 knots or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinoid cetaceans are observed within 100-m of an underway vessel; all vessels must maintain a separation distance of 500-m or greater from any sighted North Atlantic right whale; if underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots or less until the 500-m minimum separation distance has been established; and, if a North Atlantic right whale is sighted in a vessel's path, or within 500-m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. These measures and additional vessel strike avoidance measures are described in greater detail below under Mitigation. We have determined that these vessel strike avoidance measures are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat.

• NMFS should ''examine'' noise attenuation at the pile itself. While a bubble curtain addresses one pathway of acoustic propagation from the monopile, noise attenuation that addresses direct entry into the water column, such as through pile casings or dampers, should also be examined in the ''least practicable adverse impact'' analysis.

Response: Our response to Comment 1 addresses the use of pile casings and dampers. NMFS must prescribe the ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat we carefully consider two primary factors: (1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range) and the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and; (2) the practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations. In this case, we carefully evaluated Dominion's proposed mitigation measures and considered a range of other measures, and determined that the measures specific to noise attenuation represented the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat.

We have determined that the suite of mitigation measures required in this IHA represent the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. For more details on the required mitigation measures, please see the Mitigation section below.

Comment 6. The NGOs objected to NMFS' process to consider extending any one-year IHA with a truncated 15-day comment period as contrary to the MMPA.

Response: NMFS' IHA Renewal process meets all statutory requirements. All IHAs issued, whether an initial IHA or a Renewal IHA, are valid for a period of not more than one year. And the public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for IHA Renewals. As noted above, the *Request for Public Comments* section made clear that the agency was seeking comment on both the initial proposed IHA and the potential issuance of a Renewal for this project. Because any Renewal (as explained in the *Request for Public Comments* section) is limited to another year of identical or nearly identical activities in the same location (as described in the *Description of Proposed Activity* section) or the same activities that were not completed within the one-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible one-year Renewal, should the IHA holder choose to request one in the coming months.

While additional documents would be required should any such Renewal request be submitted, for a qualifying Renewal these will be limited to documentation that NMFS will make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS will also confirm, among other things, that the activities will occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The Renewal request will also contain a preliminary monitoring report, specifically to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a Renewal have been met. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a Renewal is 45 days.

In addition to the IHA Renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress' intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for Renewals in the regulations, description of the process and express invitation to comment on specific potential Renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these,

posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and Renewals respectively, NMFS has ensured that the public ''is invited and encouraged to participate fully in the agency decision-making process.''

Comment 7. The Commission recommended that NMFS authorize at least one take of humpback whales by Level A harassment for each of the two days of pile-driving activities (*i.e.,* two Level A harassment takes) based on sighting and stranding records for the species in the Mid-Atlantic.

Response: Despite exposure modeling that indicated zero takes of humpback whales would be expected, NMFS agrees with the Commission that based on sightings and stranding records that indicate the potential for humpback whales to occur in the project area during pile driving activities, authorization of take of humpback whales is warranted. We do not, however, agree that take by Level A harassment is likely and we have therefore authorized take by Level B harassment only. We have authorized two takes by Level B harassment based on the potential for one group of humpback whales to be taken during the project. Please see the Estimated Take section below for further information.

Comment 8. The Commission recommended that NMFS increase the Level B harassment takes of common dolphins from 39 to 78 based on the potential for a group to be taken on both days of the project. The Commission also recommended that NMFS increase the Level B harassment takes of bottlenose dolphins from 34 to 200 based on visual observations of groups of up to 100 animals in previous monitoring reports (Milne, 2018) and the potential for a group to be taken on both days of the project.

Response: NMFS has already increased the take estimate for common dolphins from the modeled number to mean group size. We do not agree with the Commission's assertion that the authorized take number should be based on an assumption that one group of common dolphins will be encountered on each day of the project; we therefore do not adopt the Commission's recommendation to increase take of common dolphins from 39 to 78. Regarding bottlenose dolphins, we agree that the Level B harassment number should be adjusted based on visual observations of groups of up to approximately 100 animals in previous monitoring reports associated with the Dominion CVOW project (Milne, 2018). However, we do not agree with the Commission's recommendation that the authorized take number should be increased to 200 based on an assumption that one group of bottlenose dolphins will be encountered on each day of the project; we therefore authorize 100 incidents of take for bottlenose dolphins.

Comment 9. The Commission expressed concern that some of the modeled Level A harassment zones (based on SELcum) exceed modeled Level B harassment zones, and recommended that NMFS continue to make this issue a priority to resolve in the near future.

Response: NMFS concurs with the Commission's recommendation and has made this issue a priority.

Comment 10. The Commission recommends that NMFS specify in section 4(l) of the final authorization that a double bubble curtain must be used on the pile that is driven with attenuation.

Response: NMFS agrees with this recommendation and we have included this requirement in the final IHA.

Comment 11. The Commission recommended that NMFS revise the exclusion zones in Table 2 of the final authorization to reflect the modeled distances to the Level A harassment thresholds based on SELcum for LF and MF cetaceans during unattenuated and attenuated pile driving and for HF cetaceans during unattenuated pile driving, as specified in Table 4 of the **Federal Register** notice.

Response: The Commission recommends that exclusion zones be expanded to correspond with the modeled isopleth distances for Level A harassment based on the SELcum metric. However, such a requirement assumes that a marine mammal observed momentarily within such a zone is automatically assumed to be taken by Level A harassment. This assumption ignores the fact that the SELcum metric is by definition based on accumulation time, *i.e.* the animal would need to remain within that particular zone for whatever accumulation time was incorporated in the modeling in order for auditory injury, and thereby take by Level A harassment, to occur. While the incorporation of accumulation time via the SELcum metric represents a valuable theoretical tool for modeling marine mammal exposures, NMFS does not agree that a marine mammal observed momentarily within a Level A harassment zone modeled based on the SELcum metric is automatically considered to be taken by Level A harassment. Therefore, NMFS has determined in this circumstance that an exclusion zone that far exceeds the Level A harassment zone based on the peak SPL metric (*i.e.,* the zone within which instantaneous exposure is assumed to equate to auditory injury) is sufficient to avoid takes by Level A harassment. We note that, in the case of this IHA, the 1,750-m EZ is significantly larger than modeled isopleth distances corresponding to Level A harassment (based on peak SPL) for all marine mammal functional hearing groups (Table 4). We also note that the EZ for North Atlantic right whales would effectively extend beyond 1,750-m to as far as PSOs are able to see, *i.e.,* a North Atlantic right whale observed at any distance from the pile, regardless of the whale's distance from the pile, would trigger further mitigation action (either delay or shutdown).

Comment 12. The Commission recommended that NMFS include in Table 2 of the final authorization the monitoring zone associated with unattenuated pile driving, as specified in Table 4 of the **Federal Register** notice.

Response: The Commission recommends that the monitoring zone be expanded to correspond with the modeled isopleth distance for pile driving with no attenuation, for the pile that is ultimately driven with no bubble curtains activated. NMFS agrees with the recommendation. We have also determined that the monitoring zones should coincide with the greatest potential impact distances, which in this case are associated with Level A harassment zones modeled based on SELcum (Table 4). We have therefore revised the monitoring zones for both the one pile driven with attenuation and the one pile driven without attenuation (Table 8) and we have included the revised monitoring zones in Table 2 of the IHA.

Comment 13. The Commission recommended that NMFS (1) include in section 5(c) of the final authorization that hydroacoustic monitoring must be conducted and (2) require Dominion's hydroacoustic monitoring report to include, along with the information specified in section 5(c) of the final authorization, the spatial configuration of the first and second bubble curtains relative to the pile, whether and when the double bubble curtain is active, and the extents of the Level A and B harassment zones for both unattenuated and attenuated pile driving.

Response: NMFS agrees with this recommendation and we have included this requirement in the IHA.

Comment 14. The Commission recommended that NMFS, in the final authorization (1) require Dominion to

initiate pile driving early enough in the day to ensure that pile driving is completed before sunset and (2) remove measure 4(i) that allows for pile driving to continue into nighttime hours.

Response: Regarding the recommendation to require Dominion to initiate pile driving early enough in the day to ensure that pile driving is completed before sunset, NMFS agrees with this recommendation; as a pile driving event is expected to last no more than two hours per day, we have included a requirement in the IHA that pile driving must not be initiated less than four hours prior to sunset. Regarding the recommendation to remove the measure that allows for pile driving to continue into nighttime hours, we do not agree with the recommendation as it may not be practicable for Dominion to implement. Pile driving may continue after dark only when the installation of the same pile began during daylight when the Exclusion Zone was fully visible for at least four hours, and only in extraordinary circumstances when it must proceed for human safety or installation feasibility reasons as determined by the lead engineer.

Comment 15. The Commission recommended that NMFS ensure Dominion keeps a running tally of the total takes, based on observed and extrapolated takes, for Level A and B harassment.

Response: NMFS agrees that Dominion is responsible for ensuring they do not exceed authorized take numbers. As is typical, we have included a requirement in the IHA that activities must cease if authorized take numbers are exceeded. However, NMFS does not agree that a requirement for PSOs to extrapolate takes based on observed takes as pile driving activities are ongoing is practicable as such a requirement may result in PSOs' attention being diverted from their primary task of observing and documenting marine mammal sightings. NMFS is not responsible for ensuring that Dominion does not operate in violation of an issued IHA.

Comment 16. The Commission recommended that NMFS include in all draft and final incidental harassment authorizations the explicit requirements to cease activities if a marine mammal is injured or killed, both during the proposed activities and in the event of a vessel strike, until NMFS reviews the circumstances involving any injury or death that is likely attributable to the activities and determines what additional measures are necessary to minimize additional injuries or deaths.

Response: NMFS does not expect that the proposed activities, including HRG surveys, cable-lay activities and offshore pile driving activities, have the potential to result in injury or mortality to marine mammals and therefore does not agree that a blanket requirement for project activities to cease would be warranted. While injury or mortality to marine mammals is possible due to vessel strike, NMFS does not agree that a requirement for a vessel that is operating on the open water to suddenly stop operating is practicable, and it is unclear what mitigation benefit would result from such a requirement in relation to vessel strike. The Commission does not suggest what measures other than those prescribed in this IHA would potentially prove more effective in reducing the risk of strike. Therefore, we have not included this requirement in the authorization. NMFS retains authority to modify the IHA and cease all activities immediately based on a vessel strike and will exercise that authority if warranted.

With respect to the Commission's recommendation that NMFS include these requirements in all proposed and final IHAs, NMFS determines the requirements for mitigation measures in each authorization based on numerous case-specific factors, including the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. As NMFS must make these determinations on a case by case basis, we therefore do not agree with this recommendation.

Comment 17. The Commission recommended that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process, which is similarly expeditious and fulfills NMFS's intent to maximize efficiencies. If NMFS continues to propose to issue renewals, the Commission recommends that it (1) stipulate that a renewal is a one-time opportunity (a) in all **Federal Register** notices requesting comments on the possibility of a renewal, (b) on its web page detailing the renewal process, and (c) in all draft and final authorizations that include a term and condition for a renewal and, (2) if NMFS refuses to stipulate a renewal being a one-time opportunity, explain why it will not do so in its **Federal Register** notices, on its web page, and in all draft and final authorizations.

Response: NMFS does not agree with the Commission and, therefore, does not adopt the Commission's recommendation. NMFS will provide a detailed explanation of its decision within 120 days, as required by section 202(d) of the MMPA. We addressed why renewals are appropriate in certain situations in our Response to Comment 6.

Changes From the Proposed IHA to Final IHA

As described above, the following revisions has been made to authorized take numbers:

- Authorized take by Level B harassment of humpback whales has been increased from zero to two; and
- Authorized take by Level B harassment of bottlenose dolphins has been increased from 34 to 100.

Also as described above, the following revisions have been made to mitigation and monitoring measures:

- The duration for monitoring for marine mammals prior to initiation of pile driving has been increased from 30 minutes to 60 minutes;
- The minimum amount of time before sunset that pile driving must start has been increased from 30 minutes to four hours; and
- The monitoring zones have been revised to coincide with modeled Level A harassment zones based on SELcum (Table 8).

Description of Marine Mammals in the Area of Specified Activity

Sections 4 and 5 of the IHA application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.fisheries.noaa.gov/find-species*).

All species that could potentially occur in the project area are included in Table 4–1 of the IHA application. However, the temporal and/or spatial occurrence of several species listed in Table 4–1 of the IHA application is such that take of these species is not expected to occur either because they have very low densities in the project area and/or are extralimital to the project area. These are: The blue whale (*Balaenoptera musculus*), fin whale (*Balaenoptera physalus),* sei whale *(Balaenoptera borealis),* North Atlantic

right whale (*Eubalaena glacialis),* minke whale (*Balaenoptera acutorostrata),* Bryde's whale (*Balaenoptera edeni*), sperm whale (*Physeter macrocephalus),* long-finned and short-finned pilot whale (*Globicephala* spp.), Cuvier's beaked whale (*Ziphius cavirostris*), four species of Mesoplodont beaked whale (*Mesoplodon* spp.), dwarf and pygmy sperm whale (*Kogia sima* and *Kogia breviceps*), northern bottlenose whale (*Hyperoodon ampullatus*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), melon-headed whale (*Peponocephala electra*), harbor porpoise (*Phocoena phocoena),* Risso's dolphin (*Grampus griseus*), striped dolphin (*Stenella coeruleoalba*), white-beaked dolphin (*Lagenorhynchus albirostris*), pantropical spotted dolphin (*Stenella attenuata*), Fraser's dolphin (*Lagenodelphis hosei*), rough-toothed dolphin (*Steno bredanensis*), Clymene dolphin (*Stenella clymene*), spinner dolphin (*Stenella longirostris*), hooded seal (*Cystophora cristata*), and harp seal (*Pagophilus groenlandicus*). As take of these species is not anticipated as a result of the planned activities, these species are not analyzed further in this document.

Table 1 summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2019). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR is included here as a gross indicator of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs. All values presented in Table 1 are the most recent available at the time of publication and are available in the 2019 draft Atlantic SARs (Hayes *et al.,* 2019), available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.*

TABLE 1—MARINE MAMMALS KNOWN TO OCCUR IN THE PROJECT AREA THAT MAY BE AFFECTED BY DOMINION'S ACTIVITY

Common name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR [4]	Annual M/SI [4]	Occurrence in project area
Toothed whales (Odontoceti)							
Atlantic white-sided dolphin (*Lagenorhynchus acutus*).	W. North Atlantic	--; N	93,233 (0.71; 54,443; n/a).	37,180 (0.07)	544	26	Common.
Common dolphin (*Delphinus delphis*).	W. North Atlantic	--; N	172,825 (0.21; 145,216; 2011).	86,098 (0.12)	1,452	419	Common.
Atlantic spotted dolphin (*Stenella frontalis*).	W. North Atlantic	--; N	39,921 (0.27; 32,032; 2012).	55,436 (0.32)	320	0	Common.
Bottlenose dolphin (*Tursiops truncatus*).	W. North Atlantic, Offshore.	--; N	62,851 (0.23; 51,914; 2011).	97,476 (0.06) [5]	23	28	Common offshore.
	W. North Atlantic, Southern Migratory Coastal.	--; N	3,751 (0.06; 2,353; n/a)			0–14.3	Common nearshore in summer.
Harbor porpoise (*Phocoena phocoena*).	Gulf of Maine/Bay of Fundy.	--; N	79,833 (0.32; 61,415; 2011).	45,089 (0.12)	706	255	Common.
Baleen whales (Mysticeti)							
Humpback whale (*Megaptera novaeangliae*).	Gulf of Maine	--; N	1,396 (0; 1,380; n/a)	1,637 (0.07) *	22	12.15	Common.
Earless seals (Phocidae)							
Gray seal [6] (*Halichoerus grypus*).	W. North Atlantic	--; N	27,131 (0.19; 23,158; n/a).		1,389	5,410	Common.
Harbor seal (*Phoca vitulina*).	W. North Atlantic	--; N	75,834 (0.15; 66,884; 2012).		2,006	350	Common.

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR (see footnote 3) or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] Stock abundance as reported in NMFS marine mammal stock assessment reports (SAR) except where otherwise noted. SARs available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented here are from the 2019 draft Atlantic SARs (Hayes *et al.,* 2019).

[3] This information represents species- or guild-specific abundance predicted by recent habitat-based cetacean density models (Roberts *et al.,* 2016, 2017, 2018). These models provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. Atlantic Ocean, and we provide the corresponding abundance predictions as a point of reference. Total abundance estimates were produced by computing the mean density of all pixels in the modeled area and multiplying by its area. For those species marked with an asterisk, the available information supported development of either two or four seasonal models; each model has an associated abundance prediction. Here, we report the maximum predicted abundance.

[4] Potential biological removal, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size (OSP). Annual M/SI, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI values often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the draft 2019 SARs (Hayes *et al.,* 2019).

[5] Abundance estimates are in some cases reported for a guild or group of species when those species are difficult to differentiate at sea. Similarly, the habitat-based cetacean density models produced by Roberts *et al.* (2016, 2017, 2018) are based in part on available observational data which, in some cases, is limited to genus or guild in terms of taxonomic definition. Roberts *et al.* (2016, 2017, 2018) produced a density model for bottlenose dolphins that does not differentiate between offshore and coastal stocks.

[6] NMFS stock abundance estimate applies to U.S. population only, actual stock abundance is approximately 505,000.

A detailed description of the species likely to be affected by Dominion's activities, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the notice of proposed IHA (85 FR 14901; March 16, 2020). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that notice for these descriptions. Please also refer to NMFS' website (*www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from Dominion's construction activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of proposed IHA (85 FR 14901; March 16, 2020) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from Dominion's construction activities on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (85 FR 14901; March 16, 2020).

Estimated Take

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment, as noise from pile driving has the potential to result in disruption of behavioral patterns for individual marine mammals. Impact pile driving has source characteristics (short, sharp pulses with higher peak levels and sharper rise time to reach those peaks) that are potentially injurious or more likely to produce severe behavioral reactions. However, modeling indicates there is limited potential for auditory injury even in the absence of the proposed mitigation measures, with no species predicted to experience Level A harassment. In addition, the already limited potential for injury is expected to be minimized through implementation of the proposed mitigation measures including soft start and the implementation of EZs that would facilitate a delay of pile driving if marine mammals were observed approaching or within areas that could be ensonified above sound levels that could result in auditory injury. Given sufficient notice through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious or resulting in more severe behavioral reactions. No Level A harassment of any marine mammal stocks are anticipated or authorized.

As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 µPa (rms) for impulsive and/or intermittent sources (*e.g.,* impact pile driving) and 120 dB rms for continuous sources (*e.g.,* vibratory driving). Dominion's planned activity includes the use of impulsive sources (*i.e.,* impact pile driving equipment) therefore use of the 160 dB re 1 µPa (rms) threshold is applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The components of Dominion's planned activity that may result in the take of marine mammals include the use of impulsive sources.

These thresholds are provided in Table 2 below. The references, analysis, and methodology used in the development of the thresholds are

described in NMFS 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

As described above, Dominion proposes to install two WTGs on monopile foundations. The WTG monopile foundations would each be 7.8-m in diameter. The expected hammer energy required to drive the two monopiles is 600 kJ, though a maximum potential hammer energy of 1,000 kJ may be required. Bubble curtains would also be deployed to attenuate pile driving noise on at least one of the piles. Dominion performed acoustic modeling based on scenarios including 600 kJ and 1,000 kJ hammer energy, and on attenuation levels of 15 dB, 10 dB, 6 dB and 0 dB achieved from the deployment of the bubble curtains.

Modeling was performed using the software dBSea, a 3D model developed by Marshall Day Acoustics that is built by importing bathymetry data and placing noise sources in the environment. The dBSea model allows for the incorporation of several site-specific properties including sound speed profile, temperature, salinity, and current. Noise levels are calculated throughout the project area and displayed in 3D. The model also allows for the incorporation of several ''solvers''. Two such ''solvers'' were incorporated in the modeling:

- dBSeaPE (Parabolic Equation Method): The dBSeaPE solver makes use of the parabolic equation method, a versatile and robust method of marching the sound field out in range from the sound source; and
- dBSeaRay (Ray Tracing Method): The dBSeaRay solver forms a solution by tracing rays from the source to the receiver. Many rays leave the source covering a range of angles, and the sound level at each point in the receiving field is calculated by coherently summing the components from each ray.

The number of strikes per pile incorporated in the model were 3,419 blows for the first foundation and 4,819 blows for the second foundation at a rate of 40 blows per minute (the difference in the number of anticipated blows is due to different soil conditions at the two WTG locations). These estimates of the number of blows required are considered conservative; the actual number of blows anticipated for the first and second foundations may ultimately be less. Source levels incorporated in the model were derived from data recorded at the Walney Extension Offshore Wind Farm located off the coast of England (NIRAS Consulting Ltd, 2017). Data from the Walney Extension project represents a suitable proxy for the planned project as the piles at the Walney Extension project were the same diameter as those planned for use in the CVOW project (*i.e.,* 7.8-m) and water depth at the Walney Extension project was very similar to that at the CVOW project site (a depth of 28-m at the Walney Extention project compared to a depth of 25-m at the CVOW project site). Source levels derived from the Walney Extension project and used in the modeling are shown in Table 3.

TABLE 3—SOURCE LEVELS USED IN MODELING PILE DRIVING NOISE FROM THE CVOW PROJECT

Hammer energy scenario	Source level at 1 meter
600 kJ Hammer Energy	222 dBrms$_{90}$. 213 SEL. 235 Peak.
1,000 kJ Hammer Energy	224 dBrms$_{90}$. 215 SEL. 237 Peak.

Acoustic modeling was performed for scenarios including 600 kJ and 1,000 kJ hammer energy. To be conservative, it was assumed for purposes of the exposure estimate that 1,000 kJ hammer energy would be required at all times during the driving of both piles. This represents a conservative assumption, as less energy may ultimately be required. Modeling scenarios included potential attenuation levels of 15 dB, 10 dB, 6 dB and 0 dB achieved from the deployment of the attenuation system. Table 4 shows modeled isopleth distances to Level A and Level B harassment thresholds based on 1,000 kJ hammer energy and potential attenuation levels of 15 dB, 10 dB, 6 dB and 0 dB. Level A harassment isopleths vary based on marine mammal functional hearing groups. The updated acoustic thresholds for impulsive sounds (such as pile driving) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both cumulative sound exposure level

(SEL_{cum}) and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* the metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

TABLE 4—MODELED RADIAL DISTANCES TO THRESHOLDS CORRESPONDING TO LEVEL A AND LEVEL B HARASSMENT FROM PILE DRIVING BASED ON 1,000 KJ HAMMER ENERGY

Attenuation scenario	Radial distance to Level A harassment threshold (m) *				Radial distance to Level B harassment threshold (m)
	High frequency cetaceans (peak SPL / SEL_{cum})	Low frequency cetaceans (peak SPL / SEL_{cum})	Mid frequency cetaceans (peak SPL/SEL_{cum})	Phocid pinnipeds (underwater) (peak SPL/ SEL_{cum})	All marine mammals
No attenuation	325/2,670	282/5,930	182/397	N/A/1,722	5,175
6 dB Reduction	80/1,277	N/A/3,830	N/A/252	N/A/567	3,580
10 dB Reduction	N/A/314	N/A/2,217	N/A/229	N/A/317	2,520
15 dB Reduction	N/A/233	N/A/1,277	N/A/124	N/A/236	1,370

* N/A indicates the distance to the threshold is so low it was undetectable in the modeling results.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

The habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (Roberts *et al.,* 2016, 2017, 2018) represent the best available information regarding marine mammal densities in the project area. The density data presented by Roberts *et al.* (2016, 2017, 2018) incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts et al., 2016). In subsequent years, certain models have been updated on the basis of additional data as well as certain methodological improvements. The updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys from 2010–2014 (NEFSC & SEFSC, 2011, 2012, 2014a, 2014b, 2015, 2016). More information, including the initial model results and supplementary information for each model, is available online at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.*

Marine mammal density estimates in the project area (animals/km^2) were obtained using the model results from Roberts *et al.* (2016, 2017, 2018). While pile driving activities are planned for May, these activities could potentially occur any time between May and October. Average seasonal marine mammal densities were developed for each species and for each season when pile driving activities may occur using maximum monthly densities for each species, as reported by Roberts et al. (2016; 2017; 2018) (Densities from March through May were averaged for spring; June through August densities were averaged for summer; and September through November densities were averaged for fall). To be conservative, the highest average seasonal density for each species was then carried forward in the analysis (*i.e.,* whichever of the three seasonal average densities was highest for each species was applied to the exposure estimate). The maximum seasonal density values used in the exposure estimates are shown in Table 7 below.

Take Calculation and Estimates

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to harassment thresholds were calculated, as described above. The radial distances modeled based on scenarios of 1,000 kJ hammer energy and 6 dB attenuation, 10 dB attenuation, 15 dB attenuation, and no attenuation (Table 4) were then used to calculate the areas around the pile predicted to be ensonified to sound levels that exceed relevant harassment thresholds.

Marine mammal density values were overlaid on the ensonified zones to relevant thresholds within a geographic information system (GIS). The density values were multiplied by these zones, resulting in daily Level A and Level B harassment exposure estimates. These estimates were then multiplied by the number of days of pile driving activity (*i.e.,* two) in order to estimate the number of marine mammals that would be exposed to pile driving noise above relevant thresholds for the entire project. The exposure numbers were rounded to the nearest whole individual.

The following formula describes these steps:

$$Estimated\ Take = D \times Z \times (d)$$

Where:

D = average highest species density
ZOI = maximum ensonified area to relevant thresholds
d = number of days

Dominion provided exposure estimates based on two days of pile driving for each scenario (*i.e.,* no attenuation, 6 dB attenuation, 10 dB attenuation and 15 dB attenuation). However, as Dominion has proposed driving one pile with the attenuation system activated and the other pile without the attenuation system activated (described further under Mitigation, below), we assumed for the exposure estimate that one pile would be driven with no attenuation and the other pile would be driven with an attenuation system that would achieve an overall 6 dB reduction in pile driving sound. Thus we halved the exposure estimates provided for the 0 dB attenuation and 6 dB attenuation scenarios to come up with exposure estimates for one day of pile driving for each scenario (*i.e.,* one pile driven with no attenuation, and the other pile driven with 6 dB attenuation). We then combined these to come up with exposure estimates for the two piles. We note that an estimate of an overall 6 dB reduction from the attenuation system

represents a conservative assumption, as the attenuation system planned for use is a double bubble curtain which may ultimately result in a greater level of attenuation than the assumed 6 dB (the attenuation system proposed for use is described further under Mitigation, below).

Table 5 shows modeled exposures above the Level A harassment threshold for each of the two piles and both piles combined. Note that modeling resulted in no takes by Level A harassment for any species, thus we do not authorize any takes by Level A harassment and outputs in Table 5 are for illustrative purposes only. Table 6 shows modeled exposures above the Level B harassment threshold for each of the two piles and both piles combined. Table 7 shows maximum seasonal densities used in the take estimate, the number of takes authorized, and the total takes as a percentage of population.

TABLE 5—MODELED EXPOSURES ABOVE THE LEVEL A HARASSMENT THRESHOLD ESTIMATED FOR EACH PILE AND FOR BOTH PILES COMBINED

Species	One pile with no attenuation	One pile with 6 dB attenuation	Both piles combined
Atlantic-spotted Dolphin	0.0025	0.001	0.0035
White-sided Dolphin	0.005	0.002	0.007
Bottlenose Dolphin (W.N.A. Offshore)	0.118	0.0475	0.1655
Bottlenose Dolphin (W. N. A. Southern Coastal Migratory)	0.118	0.0475	0.1655
Risso's Dolphin	0	0	0
Common Dolphin	0.008	0.003	0.011
Pilot Whales	0	0	0
Sperm Whale	0	0	0
Fin Whale	0.256	0.1065	0.3625
Harbor Porpoise	0.17	0.039	0.209
Humpback Whale	0.11	0.046	0.156
Minke Whale	0.1065	0.0445	0.151
North Atlantic Right Whale	0.0845	0.0355	0.12
Sei Whale	0.002	0.0005	0.0025
Harbor Seal	0.086	0.0095	0.0955
Gray Seal	0.086	0.0095	0.0955

TABLE 6—MODELED EXPOSURES ABOVE THE LEVEL B HARASSMENT THRESHOLD ESTIMATED FOR EACH PILE AND FOR BOTH PILES COMBINED

Species *	One pile with no attenuation	One pile with 6 dB attenuation	Both piles combined (rounded)
Common dolphin	1.34	0.45	2
Atlantic-spotted dolphin	0.43	0.14	1
Atlantic white-sided dolphin	0.86	0.29	1
Bottlenose dolphin (W. N. A. Offshore)	20.08	6.75	27
Bottlenose dolphin (W. N. A. Southern Coastal Migratory)	20.08	6.75	27
Harbor porpoise	0.64	0.22	1
Harbor seal	0.78	0.26	1
Gray seal	0.78	0.26	1

* All species potentially occurring in the project area were modeled; only species with at least one exposure above the Level B harassment threshold that were carried forward in the take analysis are shown.

TABLE 7—MARINE MAMMAL DENSITIES, NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS AUTHORIZED AND TAKES AS A PERCENTAGE OF POPULATION

Species	Density (animals/ 100 km^2)	Estimated takes by Level B harassment [1]	Total authorized takes by Level B harassment	Total authorized takes as a percentage of population [2]
Humpback whale	0.099	0	2	0.1
Common dolphin [3]	1.591	2	39	0.0
Atlantic white-sided dolphin [3]	1.018	1	40	0.1
Bottlenose dolphin (W. N. Atlantic Coastal Migratory) [4 5]	23.861	27	100	2.7
Bottlenose dolphin (W. N. Atlantic Offshore) [4 5]	23.861	27	100	0.2
Atlantic spotted dolphin [3]	0.508	1	100	0.3
Harbor porpoise [3]	0.760	1	4	0.0
Gray seal [4]	0.925	1	1	0.0
Harbor seal [4]	0.925	1	1	0.0

[1] Estimated takes based on a scenario of 1,000 kJ hammer energy and one pile driven with 6 dB attenuation and the other pile driven with no attenuation.

[2] Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 1. In most cases the best available abundance estimate is provided by Roberts *et al.* (2016, 2017, 2018), when available, to maintain consistency with density estimates derived from Roberts *et al.* (2016, 2017, 2018).

[3] Number of authorized takes (Level B harassment only) for these species has been increased from the modeled take number to mean group size. Sources for group size estimates are as follows: Atlantic white-sided dolphin: Cipriano (2018); common dolphin: Palka et al. (2015); harbor porpoise: Palka et al. (2015); Atlantic spotted dolphin: Herzing and Perrin (2018); humpback whale: NOAA Fisheries Northeast and Southeast Fisheries Science Centers (2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011).

[4] Roberts *et al.* (2016, 2017, 2018) produced a single density model for all bottlenose dolphins and did not differentiate by bottlenose dolphin stocks, and produced a single density model for all seals and did not differentiate between seal species. Hence, the density value is the same for both stocks of bottlenose dolphin stocks that may be present and for both seal species.

[5] Number of authorized takes (Level B harassment only) has been increased from the modeled take number to a group size estimate based on sighting records from previously-submitted Dominion monitoring reports.

Modeling results predicted no takes by Level A harassment for any marine mammal species (based on both SEL_{cum} and peak SPL) (See Table 5). NMFS has therefore determined that the likelihood of take of marine mammals in the form of Level A harassment occurring as a result of the planned activity is so low as to be discountable, and we do not authorize the take by Level A harassment of any marine mammals.

Using the take methodology approach described above, the resulting take estimates for humpback whale, Atlantic white-sided dolphin, common dolphin, spotted dolphin and harbor porpoise were less than the average group sizes estimated for these species. However, information on the life histories of these species indicates they are likely to be encountered in groups, therefore it is reasonable to conservatively assume that one group of each of these species will be taken during the planned activities. We therefore authorize the take of the average group size for these species to account for the possibility that a group of any of these species or stocks is taken by the planned activities (Table 7). We note that for humpback whales zero takes by Level B harassment were modeled, however as described above we have authorized the take of the mean group size of humpback whales (*i.e.,* two) based on a recommendation from the Marine Mammal Commission that authorized takes of humpback whales are warranted based on stranding and sighting records.

Roberts *et al.* (2016, 2017, 2018) produced a single density model for all bottlenose dolphins and did not differentiate by bottlenose dolphin stocks. The Western North Atlantic southern migratory coastal stock occurs in coastal waters from the shoreline to approximately the 20-m isobath (Hayes *et al.* 2019). The water depth at the WTG installation location is 25 m. As 20-m represents an approximate depth limit for the coastal stock, both stocks have the potential to occur in the project area. Therefore we authorize take for both stocks. The take calculation methodology described above resulted in an estimate of 27 bottlenose dolphin Level B harassment takes. However, the number of authorized Level B harassment takes of bottlenose dolphins has been increased from the modeled number to 100 based on an observation of a group of approximately 100 bottlenose dolphins in a previous monitoring report associated with Dominion offshore wind activity near the project area (Milne et al, 2018). We have concluded that since either stock may be present it is possible that all estimated takes may accrue to either of the stocks and we therefore authorize 100 takes from both stocks that may be present.

Similar to bottlenose dolphins, Roberts *et al.* (2018) produced density models for all seals and did not differentiate by seal species. Because the seasonality of, and habitat use by, gray seals roughly overlaps with that of harbor seals in the project area, it is possible that modeled seal takes could occur to either species. The take calculation methodology described above resulted in an estimate of one seal take. As the one modeled seal take may accrue to either seal species we therefore authorize one take from both seal species that may be present. We are therefore authorizing twice the amount of takes that the exposure modeling predicts for seal species.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The mitigation measures described below are consistent with those required and successfully implemented under previous incidental take authorizations issued in association with in-water construction activities. Modeling was performed to estimate zones of influence (ZOI; see ''Estimated Take''); these ZOI values were used to inform mitigation measures for pile driving activities to eliminate Level A harassment and minimize Level B harassment, while providing estimates of the areas within which Level B harassment might occur.

In addition to the specific measures described below, Dominion would conduct briefings for construction supervisors and crews, the marine mammal monitoring teams, and Dominion staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

Seasonal Restriction on Pile Driving

No pile driving activities may occur from November 1 through April 30. This

seasonal restriction has been established to minimize the potential for North Atlantic right whales to be exposed to pile driving noise. Based on the best available information (Roberts et al., 2017), the highest densities of right whales in the project area are expected during the months of November 1 through April when right whales are migrating. This restriction will greatly reduce the potential for right whale exposure to pile driving noise associated with the project.

Pre-Clearance, Exclusion and Monitoring Zones

Dominion will use PSOs to establish a 1,750-m exclusion zone (EZ) around the pile driving equipment to ensure this zone is clear of marine mammals prior to the start of pile driving. The purpose of ''clearance'' of a particular zone is to prevent potential instances of auditory injury and potential instances of more severe behavioral disturbance as a result of exposure to pile driving noise (serious injury or death are unlikely outcomes even in the absence of mitigation measures) by delaying the activity before it begins if marine mammals are detected within certain pre-defined distances of the pile driving equipment. The primary goal in this case is to prevent auditory injury (Level A harassment), and while we acknowledge that porpoises or seals may not be detected at this distance, the 1,750-m EZ is significantly larger than modeled distances to isopleth distances corresponding to Level A harassment (based on peak SPL) for all marine mammal functional hearing groups (Table 4). The EZ for North Atlantic right whales would effectively extend beyond 1,750-m to as far as PSOs are able to see (*i.e.,* a North Atlantic right whale observed at any distance from the pile, regardless of the whale's distance from the pile, would trigger further mitigation action (either delay or shutdown)).

In addition to the EZ, PSOs must observe a monitoring zone that corresponds with the greatest potential impact zone which in this case is associated with the modeled distance to the Level A harassment isopleth (based on SELcum) for low-frequency cetaceans (Table 4) during pile driving activities. PSOs must record information on marine mammals observed within the monitoring zone, including species, observed behavior, and estimates of number of marine mammals exposed to pile driving noise within the Level B harassment zone. Marine mammals observed within the monitoring zone but outside the EZs would not trigger any mitigation action. All distances are the radius from the center of the pile.

TABLE 8—EXCLUSION AND MONITORING ZONES

Exclusion zone	Monitoring zone (pile driven with /without active bubble curtains)
1,750 m*	3,830 m/5,930 m.

*A North Atlantic right whale observed at any distance from the pile would trigger delay or shutdown of pile driving.

If a marine mammal is observed approaching or entering the relevant EZ prior to the start of pile driving operations, pile driving activity must be delayed until either the marine mammal has voluntarily left the respective EZ and been visually confirmed beyond that zone, or, 15 minutes have elapsed without re-detection of the animal in the case of delphinids and pinnipeds or 30 minutes have elapsed without re-detection of the animal in the case of all other marine mammals.

Prior to the start of pile driving activity, the EZs must be monitored for 60 minutes to ensure that they are clear of marine mammals. Pile driving may only commence once PSOs have declared the respective zones clear of marine mammals. Marine mammals observed within a EZ must be allowed to remain in the clearance zone (*i.e.,* must leave of their own volition), and their behavior must be monitored and documented. The EZs may only be declared clear, and pile driving started, when the entire clearance zones are visible (*i.e.,* when not obscured by dark, rain, fog, etc.) for a full 30 minutes prior to pile driving.

Soft Start

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning marine mammals or providing them with a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. Dominion must utilize soft start techniques for impact pile driving by performing an initial set of three strikes from the impact hammer at a reduced energy level followed by a 30 second waiting period. The soft start process must be conducted a total of three times prior to driving each pile (*e.g.,* three strikes followed by a 30 second delay, then three additional single strikes followed by a 30 second delay, then a final set of three strikes followed by an additional 30 second delay). Soft start is required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer.

Shutdown

The purpose of a shutdown is to prevent some undesirable outcome, such as auditory injury or behavioral disturbance of sensitive species, by halting the activity. If a marine mammal is observed entering or within the EZs after pile driving has begun, PSOs must request a temporary cessation of pile driving. When called for by a PSO, shutdown of pile driving would be implemented when practicable; however, there may be instances where a shutdown is not practicable, as any significant stoppage of pile driving progress can allow for displaced sediments along the piling surface areas to consolidate and bind, potentially resulting in a situation where a piling is permanently bound in a partially driven position. If a shutdown is called for before a pile has been driven to a sufficient depth to allow for pile stability, then for safety reasons the pile would need to be driven to a sufficient depth to allow for stability and a shutdown would not be practicable until after that depth was reached. Therefore we require that shutdown be implemented when practicable.

If shutdown is called for by a PSO, and Dominion determines a shutdown to be technically practicable, pile driving must be halted immediately. After shutdown, pile driving may be initiated once all EZs are clear of marine mammals for the minimum species-specific time periods, or, if required to maintain installation feasibility. For North Atlantic right whales, shutdown would occur when a right whale is observed by PSOs at any distance, and a shutdown zone of 1,750 m would be implemented for all other species (Table 8).

Noise Attenuation System

The Project must utilize an attenuation system in order to reduce underwater noise from pile driving during the driving of at least one pile. Bubble curtains are used to reduce acoustic energy emissions from high-amplitude sources and are generated by releasing air through multiple small holes drilled in a hose or manifold deployed on the seabed near the source. The resulting curtain of air bubbles in the water attenuates sound waves propagating through the curtain. The sound attenuating effect of the noise mitigation system bubble curtain or air bubbles in water is caused by: (i) Sound

scattering on air bubbles (resonance effect) and (ii) (specular) reflection at the transition between water layer with and without bubbles (air water mixture; impedance leap). Use of a ''double bubble curtain'' entails two concentric rings of bubbles around the pile and can achieve greater levels of attenuation than the use of a single bubble curtain. A double bubble curtain would be deployed to reduce sound during pile driving activities during the driving of at least one pile.

Dominion has proposed driving one pile with the double bubble curtain activated and the other pile without the double bubble curtain activated with the goal of gathering in situ data on the effectiveness of the double bubble curtain via hydroacoustic monitoring during the driving of both piles. This effort would be supported by the Bureau of Ocean Energy Management (BOEM) Real-time Opportunity for Development Environmental Observations (RODEO) program, which aims to collect real-time measurements of the construction and operation activities from the first offshore wind facilities in the United States to allow for more accurate assessments of actual environmental effects and to inform development of appropriate mitigation measures. Dominion would activate the double bubble curtain on the pile that is expected to require more blows to complete.

The bubble curtains would distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. The lowest bubble ring would be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring would ensure 100 percent mudline contact. No parts of the ring or other objects would prevent full mudline contact. Air flow to the bubblers would be balanced around the circumference of the pile.

Visibility Requirements

All pile driving must be initiated during daylight hours, no earlier than 30 minutes after sunrise and no later than four hours before sunset. Pile driving must not be initiated at night, or, when the full extent of the 1,750 m EZ cannot be confirmed to be clear of marine mammals, as determined by the lead PSO on duty. The EZ may only be declared clear, and pile driving initiated, when the full extent of the 1,750 m EZ is visible (*i.e.,* when not obscured by dark, rain, fog, etc.) for a full 30 minutes prior to pile driving. Dominion must attempt to complete all pile driving in daylight; pile driving may continue after dark only when the installation of the same pile began during daylight at least four hours prior to sunset when the EZ was fully visible for at least 30 minutes, and only in extraordinary circumstances when it must proceed for human safety or installation feasibility reasons as determined by the lead engineer.

Monitoring Protocols

Monitoring must be conducted before, during, and after pile driving activities. In addition, PSOs must record all incidents of marine mammal occurrence, regardless of distance from the construction activity, and PSOs must document any behavioral reactions in concert with distance from piles being driven. Observations made outside the EZ will not result in delay of pile driving; that pile segment may be completed without cessation, unless the marine mammal approaches or enters the EZ, at which point pile driving activities must be halted when practicable, as described above. Pile driving activities include the time to install a single pile, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

The following additional measures apply to visual monitoring:

(1) A minimum of two PSOs must be on duty at all times during pile driving;

(2) Monitoring must be conducted by qualified, trained PSOs. PSOs must be stationed at the highest practical vantage point on the pile installation vessel;

(3) PSOs may not exceed four consecutive watch hours; must have a minimum two-hour break between watches; and may not exceed a combined watch schedule of more than 12 hours in a 24-hour period;

(4) Monitoring must be conducted from 30 minutes prior to commencement of pile driving, throughout the time required to drive a pile, and for 30 minutes following the conclusion of pile driving;

(5) PSOs must have no other construction-related tasks while conducting monitoring; and

(6) PSOs must have the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to document observations including, but not limited to: The number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury of marine mammals from construction noise within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

PSOs employed by Dominion in satisfaction of the mitigation and monitoring requirements described herein must meet the following additional requirements:

- Independent observers (*i.e.,* not construction personnel) are required;
- At least one observer must have prior experience working as an observer;
- Other observers may substitute education (degree in biological science or related field) or training for experience;
- One observer will be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and
- NMFS will require submission and approval of observer CVs.

Vessel Strike Avoidance

Vessel strike avoidance measures include, but are not limited to, the following, except under circumstances when complying with these measures would put the safety of the vessel or crew at risk:

- All vessel operators and crew must maintain vigilant watch for cetaceans and pinnipeds, and slow down or stop their vessel to avoid striking these protected species;
- All vessels must travel at 10 knots (18.5 km/hr) or less within any designated Dynamic Management Area (DMA) or Seasonal Management Area for North Atlantic right whales;
- All vessel operators must reduce vessel speed to 10 knots (18.5 km/hr) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinoid cetaceans are observed near (within 100 m (330 ft)) an underway vessel;
- All vessels must maintain a separation distance of 500 m (1640 ft) or

greater from any sighted North Atlantic right whale;

• If underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots (18.5 km/hr) or less until the 500 m (1640 ft) minimum separation distance has been established. If a North Atlantic right whale is sighted in a vessel's path, or within 500 m (330 ft) to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the right whale has moved outside of the vessel's path and beyond 500 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 500 m;

• All vessels must maintain a separation distance of 100 m (330 ft) or greater from any sighted non-delphinoid cetacean. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m;

• All vessels must maintain a separation distance of 50 m (164 ft) or greater from any sighted delphinoid cetacean, with the exception of delphinoid cetaceans that voluntarily approach the vessel (*i.e.,* bow ride). Any vessel underway must remain parallel to a sighted delphinoid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway must reduce vessel speed to 10 knots (18.5 km/hr) or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or the abeam of the underway vessel;

• All vessels must maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped; and

• All vessels underway must not divert or alter course in order to approach any whale, delphinoid cetacean, or pinniped. Any vessel underway will avoid excessive speed or abrupt changes in direction to avoid injury to the sighted cetacean or pinniped.

Dominion must ensure that vessel operators and crew maintain a vigilant watch for marine mammals by slowing down or stopping the vessel to avoid striking marine mammals. Project-specific training must be conducted for all vessel crew prior to the start of the construction activities. Confirmation of the training and understanding of the requirements will be documented on a training course log sheet.

The mitigation measures are designed to avoid the already low potential for injury in addition to some instances of Level B harassment, and to minimize the potential for vessel strikes. Further, we believe the mitigation measures are practicable for Dominion to implement. There are no known marine mammal rookeries or mating or calving grounds in the project area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both).

Based on our evaluation of the required measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

Monitoring Measures

Dominion must collect sighting data and behavioral responses to pile driving activity for marine mammal species observed in the region of activity during the period of activity. All observers must be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. PSOs must be stationed on the pile installation vessel. The observer platform would be elevated approximately 40-m above the sea surface. Dominion estimates that at this height a PSO with minimum 7x50 binoculars would be able to monitor a first reticule distance of approximately 3.2 miles from the sound source. PSOs must monitor the EZ and the Level B harassment zone at all times and would document any marine mammals observed within these zones, to the extent practicable. PSOs must conduct monitoring before, during, and after pile driving and removal, with observers located at the best practicable vantage points.

Dominion must implement the following monitoring procedures:

• A minimum of two PSOs must maintain watch at all times when pile driving is underway;

• PSOs must be located at the best possible vantage point(s) on the pile installation vessel to ensure that they are able to observe the entire EZ and as much of the monitoring zone as possible;

• During all observation periods, PSOs must use binoculars and the naked eye to search continuously for marine mammals;

• PSOs must be equipped with reticle binoculars and range finders as well as a digital single-lens reflex 35mm camera;

• Position data must be recorded using hand-held or vessel based global

positioning system (GPS) units for each sighting;

• If the EZ is obscured by fog or poor lighting conditions, pile driving must not be initiated until the EZ is fully visible. Should such conditions arise while pile driving is underway, the activity must be halted when practicable, as described above; and

• The EZ and monitoring zone must be monitored for the presence of marine mammals before, during, and after all pile driving activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. PSOs will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to the protocol will be coordinated between NMFS and Dominion.

Data Collection

We require that observers use standardized data forms. Among other pieces of information, Dominion must record detailed information about any implementation of delays or shutdowns, including the distance of animals to the pile and a description of specific actions that ensued and resulting behavior of the animal, if any. We require that, at a minimum, the following information be collected on the sighting forms:

• Dates and times (begin and end) of all marine mammal monitoring;

• Construction activities occurring during each daily observation period, including how many and what type of piles were driven and by what method;

• Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state);

• The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;

• Age and sex class, if possible, of all marine mammals observed;

• PSO locations during marine mammal monitoring;

• Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);

• Description of any marine mammal behavior patterns during observation, including direction of travel and estimated time spent within the Level A and Level B harassment zones while the source was active;

• Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);

• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;

• Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals;

• An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible; and

• All PSO datasheets and/or raw sighting data must be submitted (in a separate file from the Final Report).

Dominion must also note behavioral observations, to the extent practicable, if a marine mammal has remained in the area during construction activities.

Reporting

A draft report must be submitted to NMFS within 90 days of the completion of monitoring for each installation's in-water work window. The report must include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and would also provide descriptions of any behavioral responses to construction activities by marine mammals. The report must detail the monitoring protocol, summarize the data recorded during monitoring including an estimate of the number of marine mammals that may have been harassed during the period of the report, and describe any mitigation actions taken (*i.e.,* delays or shutdowns due to detections of marine mammals, and documentation of when shutdowns were called for but not implemented and why). A final report must be submitted within 30 days following resolution of comments on the draft report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Dominion must report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to the Mid-Atlantic regional stranding coordinator as soon as feasible. The report must include the following information:

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

• Species identification (if known) or description of the animal(s) involved;

• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;

• If available, photographs or video footage of the animal(s); and

• General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving activities associated with the planned project, as described previously, have the potential to disturb or temporarily displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (potential behavioral disturbance) from underwater sounds generated from pile driving. Potential takes could occur if individual marine mammals are present in the ensonified zone when pile driving is occurring. To avoid repetition, the our analyses apply to all the species listed in Table 1, given that

the anticipated effects of the planned project on different marine mammal species and stocks are expected to be similar in nature.

Impact pile driving has source characteristics (short, sharp pulses with higher peak levels and sharper rise time to reach those peaks) that are potentially injurious or more likely to produce severe behavioral reactions. However, modeling indicates there is limited potential for auditory injury even in the absence of the mitigation measures, with no species predicted to experience Level A harassment. In addition, the already limited potential for injury is expected to be minimized through implementation of the mitigation measures including soft start and the implementation of EZs that would facilitate a delay of pile driving if marine mammals were observed approaching or within areas that could be ensonified above sound levels that could result in auditory injury. Given sufficient notice through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious or resulting in more severe behavioral reactions. No Level A harassment of any marine mammal stocks are anticipated or authorized.

Repeated exposures of individuals to relatively low levels of sound outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors. Thus, even repeated Level B harassment of some small subset of an overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Instances of more severe behavioral harassment are expected to be minimized by mitigation and monitoring measures. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014). Most likely, individuals will simply move away from the sound source and temporarily avoid the area where pile driving is occurring. Therefore, we expect that animals disturbed by project sound would simply avoid the area during pile driving in favor of other, similar habitats. We expect that any avoidance of the project area by marine mammals would be temporary in nature and that any marine mammals that avoid the project area during construction activities would not be permanently displaced.

Feeding behavior is not likely to be significantly impacted, as prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during construction activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. There are no areas of notable biological significance for marine mammal feeding known to exist in the project area, and there are no rookeries, mating areas, or calving areas known to be biologically important to marine mammals within the project area. The area is part of a biologically important migratory area for North Atlantic right whales; however, seasonal restrictions on pile driving activity, which would restrict pile driving to times of year when right whales are least likely to be migrating through the project area, would minimize the potential for the activity to impact right whale migration.

NMFS concludes that exposures to marine mammals due to the project would result in only short-term effects to individuals exposed. Marine mammals may temporarily avoid the immediate area but are not expected to permanently abandon the area. Impacts to breeding, feeding, sheltering, resting, or migration are not expected, nor are shifts in habitat use, distribution, or foraging success. Serious injury or mortality as a result of the planned activities would not be expected even in the absence of the mitigation and monitoring measures, and no serious injury or mortality of any marine mammal stocks are anticipated or authorized. NMFS does not anticipate the marine mammal takes that would result from the planned project would impact annual rates of recruitment or survival.

Gray and harbor seals are experiencing an ongoing unusual mortality event (UME). Although the ongoing UME is under investigation, the UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (345) is well below PBR (2,006) (Hayes et al., 2018). For gray seals, the population abundance is over 27,000, and abundance is likely increasing in the U.S. Atlantic EEZ and in Canada (Hayes et al., 2018). No injury, serious injury or mortality is expected or authorized, and Level B harassment of gray and harbor seals will be reduced to the level of least practicable adverse impact through implementation of mitigation measures. As such, the authorized takes of gray and harbor seals would not exacerbate or compound the ongoing UMEs in any way.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No Level A harassment, serious injury or mortality is anticipated or authorized;
- The anticipated impacts of the planned activity on marine mammals would be temporary behavioral changes due to avoidance of the project area;
- Total authorized takes as a percentage of population are low for all species and stocks (*i.e.,* less than one percent of all stocks);
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the project area during the project to avoid exposure to sounds from the activity;
- Effects on species that serve as prey species for marine mammals from the project are expected to be short-term and are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations;
- There are no known important feeding, breeding, or calving areas in the project area, and authorized activities are limited to times of year when potential impacts to migration would not be expected; and
- Mitigation measures, including visual monitoring, exclusion and monitoring zones, a bubble curtain used on at least one pile, and soft start, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is less than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

We authorize incidental take of seven marine mammal stocks. The total amount of taking authorized is less than one third of the best available population abundance estimate for all stocks (Table 7), which we find are small numbers of marine mammals relative to the estimated overall population abundances for those stocks.

Based on the analysis contained herein of the planned activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of all affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the proposed action qualifies to be categorically excluded from further NEPA review.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species. No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA was not required for this action.

Authorization

NMFS has issued an IHA to Dominion for conducting pile driving activity offshore of Virginia, for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–10982 Filed 5–20–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XX055]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application from the Northeast Fisheries Science Center contains all the required information and warrants further consideration. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Coastal Fisheries Cooperative Management Act require publication of this notice to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before June 5, 2020.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on NEFSC Ropeless Fishing EFP.''
- *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on NEFSC Ropeless Fishing EFP.''

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281–9225.

SUPPLEMENTARY INFORMATION: The Northeast Fisheries Science Center (NEFSC) submitted a complete application for an Exempted Fishing Permit (EFP) on March 9, 2020, to conduct fishing activities that the regulations would otherwise restrict. NEFSC is requesting an exemption from Federal lobster regulations that would authorize five federally permitted commercial lobster vessels to participate in a ropeless lobster gear study in Lobster Conservation Management Area 3. NEFSC is requesting an exemption from gear marking requirements at 50 CFR 697.21(b)(2) to allow for the use of a single buoy marker on a trawl of more than three traps.

The purpose of this study is to test a prototype ropeless fishing system as a potential technique to prevent entanglements of protected species, primarily North Atlantic right whales.

The EFP would authorize five participating vessels to modify some of their existing trawls, consisting of 35–45 traps. Experimental trawls would either have a rope spool, a buoy and stowed rope system, or a lift bag system fitted with an acoustic release, deployed on one end of the trawl, with a buoy line attached to the other. Soak time would be between 4–8 days, but may be modified depending on what each fisherman decides is appropriate for fishing. Sampling would occur from May to October, 2020. Initial deployments would be overseen by an

engineering team. NEFSC estimated there would be approximately 96 deployments of experimental trawls.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. We may grant EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. The EFP would prohibit any fishing activity conducted outside the scope of the exempted fishing activities.

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

Dated: May 18, 2020.

Hélène M.N. Scalliet,

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

[FR Doc. 2020–11017 Filed 5–20–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA196]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Atlantic Mackerel, Squid, and Butterfish (MSB) Committee will hold a meeting.

DATES: The meeting will be held on Monday June 8, 2020 at 9 a.m. and conclude by 4:30 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar with a telephone-only audio connection: *http://mafmc.adobeconnect.com/msbc2020illex/.* Telephone instructions are provided upon connecting, or the public can call direct: (800) 832–0736, Rm: *7833942#.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255, or visit *www.mafmc.org.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop committee recommendations regarding an amendment to the MSB fishery management plan that could modify the plan's goals and objectives as well as the permitting system and associated management measures for *Illex* squid.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to any meeting date.

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

Dated: May 18, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–11009 Filed 5–20–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA190]

Caribbean 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 Caribbean Fishery Management Council's (Council) District Advisory Panels (DAPs) will hold public virtual meetings to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The DAPs public virtual meetings will be held as follows: St. Thomas/St. John DAP, June 8, 2020, from 10 a.m. to 12 p.m.; St. Croix DAP, June 9, 2020, from 10 a.m. to 12 p.m.; Puerto Rico DAP, June 10, 2020, from 10 a.m. to 12 p.m. All meetings will be at Eastern Day Time.

ADDRESSES: You may join the DAPs public virtual meetings (via GoToMeeting) from a computer, tablet or smartphone by entering the following address:

Monday, June 8, 2020—St. Thomas/St. John, DAP 10 a.m.–12 p.m.

Please join the meeting from your computer, tablet or smartphone. *https://global.gotomeeting.com/join/114042653.*

You can also dial in using your phone.

United States: +1 (872) 240–3311
Access Code: 114–042–653

You may download the GoToMeeting app to be ready when the meeting starts: *https://global.gotomeeting.com/install/114042653.*

Tuesday, June 9, 2020—St. Croix, DAP 10 a.m.–12 p.m.

Please join the meeting from your computer, tablet or smartphone. *https://global.gotomeeting.com/join/245609085.*

You can also dial in using your phone.

United States: +1 (571) 317–3122
Access Code: 245–609–085

You may download the GoToMeeting app to be ready when the meeting starts: *https://global.gotomeeting.com/install/245609085.*

Wednesday, June 10, 2020—Puerto Rico DAP 10 a.m.–12 p.m.

Please join the meeting from your computer, tablet or smartphone. *https://global.gotomeeting.com/join/453789421.*

You can also dial in using your phone.

United States: +1 (646) 749–3122
Access Code: 453–789–421

You may download the GoToMeeting app to be ready when the meeting starts: *https://global.gotomeeting.com/install/453789421.*

FOR FURTHER INFORMATION CONTACT: Miguel Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903; telephone: (787) 398–3717.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

10 a.m.–11 a.m.

—Call to Order
—Roll Call
—Adoption of Agenda
—How the Fishing Industry is Coping with the Pandemic Impacts—Presentation by Cedric Taquin

11 a.m.–11:10 a.m.

—Break

11:10 a.m.–12 p.m.

—Island-Based FMPs Update
—Other Business

All three meetings will be discussing the same agenda items.

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The

meetings will begin on June 8, 2020, at 10 a.m. EDT, and will end on June 10, 2020, at 12 p.m. EDT. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated, at the discretion of the Chair.

Special Accommodations

Simultaneous interpretation will be provided. To receive interpretation in Spanish you can dial into the meeting as follows:

US/Canada: call +1–888–947–3988, when system answers, enter 1*999996#. Para interpretación en inglés marcar:

US/Canada: call +1–888–947–3988, cuando el sistema conteste, entrar el siguiente número 2*999996#.

For any additional information on this public virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

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

Dated: May 18, 2020.

Tracey L. Thompson,

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

[FR Doc. 2020–11005 Filed 5–20–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the U.S. Army Science Board (''the Board'').

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

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

The Board shall provide independent advice and recommendations on matters relating to (a) the Army scientific, technical, manufacturing, acquisition, logistics, and business management functions; (b) environmental and water resource management issues involving the U.S. Army Corps of Engineers (USACE), to include the Military Program and the Civil Works Program; and (c) other Department of the Army-related matters as determined by the Secretary of the Army. The Board shall be composed of no more than 20 members appointed in accordance with DoD policy and procedures, who are prominent authorities in one or more of the following disciplines and fields: Science, technology, manufacturing, acquisition, logistics, business management functions, and natural (*e.g.,* biology, ecology), social (*e.g.,* anthropology, community planning), and related sciences, and other matters of special interest to the Department of the Army. Board members who are not full-time or permanent part-time Federal civilian officers, employees, or active duty members of the Armed Forces will be appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. Board members who are full-time or permanent part-time Federal civilian officers, employees, or active duty members of the Armed Forces will be appointed pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

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

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

Dated: May 18, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–10976 Filed 5–20–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0071]

Agency Information Collection Activities; Comment Request; Waiver Requests Related to the Adult Education and Family of Literacy Act and the Carl D. Perkins Career and Technical Education Act

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 20, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0071. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Braden Goetz, 202–245–7405.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize

the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Waiver Requests Related to the Adult Education and Family of Literacy Act and the Carl D. Perkins Career and Technical Education Act.

OMB Control Number: 1830–0580.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 38.

Total Estimated Number of Annual Burden Hours: 10.

Abstract: This information collection solicits from State educational agencies requests for waivers of section 421(b) of the General Education Provisions Act (to extend the period of availability for obligation of State formula grant funds authorized by the Carl D. Perkins Career and Technical Education Act of 2006 and the Adult Education and Family Literacy Act.

Dated: May 18, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–10987 Filed 5–20–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations, Pursuant to the Energy Policy Act of 1992; Notice of Annual Change in the Producer Price Index for Finished Goods

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The Commission bases the index system, found at 18 CFR 342.3, on the annual change in the Producer Price Index for Finished Goods (PPI–FG), plus one point two three percent (PPI–FG + 1.23). The Commission determined in an *Order Establishing Index Level,*[1] issued December 17, 2015, that PPI–FG + 1.23 is the appropriate oil pricing index factor for pipelines to use for the five-year period commencing July 1, 2016.

The regulations provide that the Commission will publish annually an index figure reflecting the final change in the PPI–FG after the Bureau of Labor Statistics publishes the final PPI–FG in May of each calendar year. The annual average PPI–FG index figures were 204.1 for 2018 and 205.7 for 2019.[2] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 2018 to 2019, plus 1.23 percent, is positive 0.020139.[3] Oil pipelines must multiply their July 1, 2019, through June 30, 2020, index ceiling levels by positive 1.020139 [4] to compute their index ceiling levels for July 1, 2020, through June 30, 2021, in accordance with 18 CFR 342.3(d). For guidance in calculating the ceiling levels for each 12-month period beginning January 1, l995,[5] *see Explorer Pipeline Company,* 71 FERC 61,416, at n.6 (1995).

In addition to publishing the full text of this Notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print this Notice via the internet through FERC's Home Page (*http://www.ferc.gov*) using the eLibrary link. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page. 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.

User assistance is available for eLibrary and other aspects of FERC's website during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (email at *FERCOnlineSupport@ferc.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

Dated: May 15, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–10968 Filed 5–20–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: ER16–262–002.

Applicants: Uniper Global Commodities North America, LLC.

Description: Notice of Non-Material Change in Status of Uniper Global Commodities North America LLC.

Filed Date: 4/27/20.

Accession Number: 20200427–5290.

Comments Due: 5 p.m. ET 5/18/20.

Docket Numbers: ER18–1646–000.

Applicants: Electric Energy, Inc.

Description: Electric Energy, Inc. submits tariff filing per 35.19a(b): Refund Report_[ER18–1646 and EL18–96] to be effective N/A.

Filed Date: 5/15/20.

Accession Number: 20200515–5179.

Comments Due: 5 p.m. ET 6/5/20.

Docket Numbers: ER20–741–000.

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[1] 153 FERC 61,312, at P 52 (2015).

[2] Bureau of Labor Statistics (BLS) publishes the final figure in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the BLS, at 202–691–7705, and in print in August in Table 1 of the annual data supplement to the BLS publication Producer Price Indexes via the internet at *http://www.bls.gov/ppi/home.htm.* To obtain the BLS data, scroll down to PPI Databases and click on Top Picks of the Commodity Data including headline FD–ID indexes (Producer Price Index—PPI). At the next screen, under the heading PPI Commodity Data, select the box, Finished goods—WPUFD49207, then scroll to the bottom of this screen and click on Retrieve data.

[3] [205.7–204.1]/204.1 = .007839 + 0.0123 = +0.020139.

[4] 1 + 0.020139 = 1.020139.

[5] For a listing of all prior multipliers issued by the Commission, see the Commission's website, *http://www.ferc.gov/industries/oil/gen-info/pipeline-index.asp.*

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: Report Filing: 2020–05–08_SA 3224 Ameren Illinois-Bishop Hill FSA Refund Report Supplement to be effective N/A.

Filed Date: 5/8/20.

Accession Number: 20200508–5095.

Comments Due: 5 p.m. ET 5/29/20.

Docket Numbers: ER20–1823–000.

Applicants: Vermont Transco LLC.

Description: Petition for Limited Waiver, et al. of Vermont Transco LLC.

Filed Date: 5/14/20.

Accession Number: 20200514–5127.

Comments Due: 5 p.m. ET 5/19/20.

Docket Numbers: ER20–1825–000.

Applicants: Southern California Edison Company.

Description: Petition for Limited Waiver, et al. of Southern California Edison Company.

Filed Date: 5/14/20.

Accession Number: 20200514–5163.

Comments Due: 5 p.m. ET 5/21/20.

Docket Numbers: ER20–1826–000.

Applicants: Puget Sound Energy, Inc.

Description: § 205(d) Rate Filing: Administrative Filing to Update eTariff Database to be effective 4/1/2020.

Filed Date: 5/14/20.

Accession Number: 20200514–5169.

Comments Due: 5 p.m. ET 6/4/20.

Docket Numbers: ER20–1827–000.

Applicants: Puget Sound Energy, Inc.

Description: Tariff Cancellation: Administrative Filing to Cancel Duplicate Tariff Record to be effective 5/15/2020.

Filed Date: 5/14/20.

Accession Number: 20200514–5166.

Comments Due: 5 p.m. ET 6/4/20.

Docket Numbers: ER20–1828–000.

Applicants: PacifiCorp.

Description: Compliance filing: OATT Order 864 Compliance Filing to be effective 6/1/2020.

Filed Date: 5/14/20.

Accession Number: 20200514–5180.

Comments Due: 5 p.m. ET 6/4/20.

Docket Numbers: ER20–1829–000.

Applicants: Trans-Allegheny Interstate Line Company, PJM Interconnection, L.L.C.

Description: Compliance filing: TrAILCo submits revisions to OATT Att. H–18A re: Order 864 to be effective 1/27/2020.

Filed Date: 5/15/20.

Accession Number: 20200515–5017.

Comments Due: 5 p.m. ET 6/5/20.

Docket Numbers: ER20–1830–000.

Applicants: Duquesne Light Company, PJM Interconnection, L.L.C.

Description: Compliance filing: Duquesne submits revisions to OATT Att H–17A re: Order 864 to be effective 1/27/2020.

Filed Date: 5/15/20.

Accession Number: 20200515–5030.

Comments Due: 5 p.m. ET 6/5/20.

Docket Numbers: ER20–1831–000.

Applicants: UGI Utilities, Inc., PJM Interconnection, L.L.C.

Description: Compliance filing: UGI submits revisions to OATT Attachment H–8C re: Order 864 to be effective 1/27/2020.

Filed Date: 5/15/20.

Accession Number: 20200515–5057.

Comments Due: 5 p.m. ET 6/5/20.

Docket Numbers: ER20–1832–000.

Applicants: Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., PJM Interconnection, L.L.C.

Description: Compliance filing: DEOK submits revisions to OATT, Att. H–22A re: Order 864 to be effective 1/27/2020.

Filed Date: 5/15/20.

Accession Number: 20200515–5123.

Comments Due: 5 p.m. ET 6/5/20.

Docket Numbers: ER20–1833–000.

Applicants: GenOn Mid-Atlantic, LLC.

Description: § 205(d) Rate Filing: Reactive Service Rate Schedule Filing for Deactivation of Dickerson Units to be effective 7/17/2020.

Filed Date: 5/15/20.

Accession Number: 20200515–5124.

Comments Due: 5 p.m. ET 6/5/20.

Docket Numbers: ER20–1834–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: 2nd Amendment to Lassen Municipal Utility District IA (RS 225) to be effective 7/1/2020.

Filed Date: 5/15/20.

Accession Number: 20200515–5126.

Comments Due: 5 p.m. ET 6/5/20.

Docket Numbers: ER20–1835–000.

Applicants: Puget Sound Energy, Inc.

Description: § 205(d) Rate Filing: BPA-Lewis PUD Agreements to be effective 6/1/2020.

Filed Date: 5/15/20.

Accession Number: 20200515–5153.

Comments Due: 5 p.m. ET 6/5/20

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 15, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–10969 Filed 5–20–20; 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 Numbers: RP20–868–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Cleanup to Remove Non-Conforming Cameron K911327 to be effective 6/14/2020.

Filed Date: 5/14/20.

Accession Number: 20200514–5010.

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

Docket Numbers: RP20–869–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Rate Schedule S–2 Tracker Filing Effective April 1, 2020 to be effective 4/1/2020.

Filed Date: 5/14/20.

Accession Number: 20200514–5030.

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

Docket Numbers: RP20–870–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20200514 Negotiated Rate to be effective 5/15/2020.

Filed Date: 5/14/20.

Accession Number: 20200514–5113.

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

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

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified 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 15, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–10970 Filed 5–20–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2020–0008; FRL–10008–96–OW]

Request for Comment on Whether EPA's Approval of a Clean Water Act Section 404 Program Is Non-Discretionary for Purposes of Endangered Species Act Section 7 Consultation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) requests comment on whether the EPA should reconsider its current position that consultation under Endangered Species Act (ESA) section 7 is not required when the EPA approves a state or tribe's request to assume the Clean Water Act (CWA) section 404 dredged and fill permit program under the CWA. Comments in response to this document will be considered as the EPA reviews this position. If the EPA changes its current position, then the EPA would take the position that the Agency's decision as to whether to approve or disapprove a state's or tribe's request to assume the CWA section 404 permit program involves an exercise of discretion warranting consultation under ESA section 7. Section 7 consultation under the ESA would consequently apply to state and tribal requests to assume the CWA section 404 program and potentially subsequent program revisions, and the EPA would consult on its actions with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (hereafter referred to as ''the Services'') under the ESA as appropriate.

DATES: Comments may be submitted on or before July 6, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–OW–2020–0008. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, may not be placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

Instructions: All submissions received must include the Docket ID No. for this document. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room was closed to public visitors on March 31, 2020, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov* or email, as there is a temporary suspension of mail delivery to the EPA, and no hand deliveries are currently accepted. For further information on the EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Kathy Hurld, Oceans, Wetlands, and Communities Division, Office of Water (4504–T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–5700; email address: *404gESAconsultation@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Information

A. Does this action apply to me?

States and tribes that have assumed or are considering assuming the administration of the CWA section 404 dredged or fill permitting program, as well as regulated entities and members of the public may be interested in providing input on the issue described in this document.

B. What should I consider as I prepare my comments?

Submit your comments, identified by Docket ID No. EPA–HQ–OW–2020–0008, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be 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 (*e.g.,* 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.*

The EPA is temporarily suspending its Docket Center and Reading Room for public visitors to reduce the risk of transmitting COVID–19. Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov.* For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID–19.

II. Background

A. CWA Section 404 Dredged and Fill Material Permit Program

Section 404 of the CWA establishes a program to regulate the discharge of dredged or fill material into waters of the United States, which includes wetlands. Activities in waters of the United States regulated under this program include, for example, fill for

development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports), natural resource extraction projects, and wetland restoration efforts. CWA section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from regulation under CWA 404(f). The substantive and procedural requirements applicable to CWA section 404 are detailed in the EPA's regulations at 40 CFR parts 230 through 233 and the regulations of the U.S. Army Corps of Engineers at 33 CFR parts 323 through 338. Proposed discharges are regulated through a permit process implemented by the U.S. Army Corps of Engineers or authorized states and tribes.

B. State and Tribal Assumption of CWA Section 404

In amendments to the CWA in 1977 and 1987, Congress gave states and tribes the ability to assume responsibility for part of the CWA section 404 permit program. The amendments require the EPA to approve or deny a state's or tribe's request to assume the permit program in lieu of the U.S. Army Corps of Engineers, to oversee operation of the assumed program, and to coordinate federal review of state or tribal permit actions. 33 U.S.C. 1344(g)–(i). To assume the CWA section 404 program, states or tribes must develop a dredged and fill material discharge permit program consistent with the requirements of the CWA and implementing regulations at 40 CFR part 233 and submit a request to assume the program to the EPA. States or tribes must have a program that is consistent with and no less stringent than the requirements of the CWA and implementing regulations. 40 CFR 233.1(d). The assumed program must include, but is not limited to, the following provisions laid out in the statute and program regulations: Regulation of discharges into all assumed waters within the state or tribe's jurisdiction; regulation of at least the same scope of activities as the CWA section 404 program; permitting procedures; permit issuance consistent with the environmental review criteria known as the CWA section 404(b)(1) Guidelines, applicable CWA section 303 water quality standards, and applicable CWA section 307 effluent standards and prohibitions; administrative and judicial review procedures; public notice and participation requirements; compliance and enforcement authorities as specified in the regulations; information collection requirements; and coordination procedures with Federal agencies and adjacent states and tribes. 40 CFR part 233, subparts C through F; *see* 33 U.S.C. 1344(h).

Section 404(h)(2) of the CWA states that if the Administrator of the EPA determines that a state or tribe that has submitted a program under section 404(g)(1) has the authority set forth in section 404(h)(1) of the CWA, then the Administrator ''shall approve'' the state or tribe's program request to transfer the section 404 permitting program. Under CWA section 404(h)(3), if the Administrator fails to make a determination with respect to any program request submitted by a state or tribe within 120 days after date of receipt of the request, the program shall be deemed approved.

C. Consultation Under the ESA and State and Tribal Assumption Under CWA Section 404

The ESA section 7 directs each Federal agency to ensure, in consultation with the Services, that ''any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of'' listed species or result in the destruction or adverse modification of designated critical habitat. 16 U.S.C. 1536(a)(2). If the Federal agency determines that an action will not affect listed species or designated critical habitat, ESA section 7 consultation is not required. In addition, the ESA regulations at 50 CFR 402.03 state that section 7 applies to ''all actions in which there is discretionary Federal involvement or control.''

In *National Association of Home Builders* v. *Defenders of Wildlife,* 551 U.S. 644 (2007), the United States Supreme Court held that because the transfer of CWA National Pollutant Discharge Elimination System (NPDES) permitting authority to a state ''is not discretionary, but rather is mandated once a State has met the criteria set forth in section 402(b) of the CWA, it follows that a transfer of NPDES permitting authority does not trigger section 7(a)(2)'s consultation and no-jeopardy requirements.'' 551 U.S. at 673. The Supreme Court held that ''[w]hile EPA may exercise some judgment in determining whether a State has demonstrated that it has the authority to carry out section 402(b)'s enumerated statutory criteria, the statute clearly does not grant it the discretion to add an entirely separate prerequisite to the list. Nothing in the text of section 402(b) authorizes the EPA to consider the protection of threatened or endangered species as an end in itself when evaluating a transfer application.'' *Id.* at 671.

The EPA has previously taken the position that the Supreme Court's rationale in *National Association of Home Builders* applies to approval of a state's or tribe's dredged and fill permit programs under section 404(h) of the CWA. On December 6, 2010, the Environmental Council of the States (ECOS) and the Association of State Wetland Managers, Inc. (ASWM), sent a letter to the EPA asking whether the EPA must conduct an ESA section 7 consultation prior to approving or disapproving a state or tribe's section 404 program request. *See* Docket ID No. EPA–HQ–OW–2020–0008. The Agency responded to ECOS and ASWM in a December 27, 2010 letter (''Letter to ECOS and ASWM''), *see* Docket ID No. EPA–HQ–OW–2020–0008, stating that, as in the CWA section 402(b) context, when considering a state or tribal CWA section 404 program request, the EPA is only permitted to evaluate the specified criteria in CWA section 404(h) and does not have discretion to add requirements to the list in CWA section 404(h), including considerations of endangered and threatened species through ESA section 7 consultation with the Services.

The EPA stated in the 2010 letter that although there are some differences between CWA sections 402 and 404, the EPA's position was that the Supreme Court's reasoning in the *National Association of Home Builders* case applies to the EPA's approval of a CWA section 404(g) permitting program. Section 404(h)(2) of the CWA states that if the Administrator determines that a state program submitted under CWA section 404(g)(1) has the authority set forth in section 404(h)(1) of the CWA, then the Administrator ''shall approve'' the state's application to transfer the CWA section 404 permitting program. The 2010 letter thus concluded that this action is non-discretionary and ESA consultation is not required. The EPA further noted that although ESA section 7 consultation is not required, a number of important safeguards exist in the CWA and the EPA's regulations which work to ensure that concerns about listed species and designated critical habitat are addressed in approved CWA section 404(g) programs. State and tribal programs must issue permits that comply with the CWA section 404(b)(1) Guidelines (40 CFR 233.20(a)) which include the requirement that a permit may not be issued that ''[j]eopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or results in likelihood of the destruction or adverse modification of . . . critical habitat . . . .'' 40 CFR

230.10(b)(3). Additionally, permits which have ''[d]ischarges with reasonable potential for affecting endangered or threatened species as determined by the Fish and Wildlife Service'' must be sent to the EPA for review. The EPA shares these permits with the U.S. Army Corps of Engineers and the Services during this review.

In July 2019, the EPA received a request from the Florida Department of Environmental Protection (FDEP) asking the EPA to engage in an ESA section 7 consultation with the Services in connection with the EPA's initial review of a Florida's request to assume the CWA section 404 program. FDEP provided a white paper contending that ESA section 7 consultation is required in the CWA section 404 assumption context because of the unique statutory text and legislative history found in CWA section 404, which, in the FDEP's view, differ in critical respects from other state delegation programs administered by the EPA where ESA section 7 does not apply.

FDEP made a number of points in its white paper. *See* Docket ID No. EPA–HQ–OW–2020–0008. FDEP noted that, as a preliminary matter, the EPA's approval or disapproval of state assumption of the CWA section 404 program is an ''action'' for purposes of ESA section 7(a)(2). The Services' regulations governing ESA consultations expressly define ''action'' to include ''the promulgation of regulations,'' 50 CFR 402.02, and the EPA's approval of state assumption is undertaken through rulemaking. FDEP then emphasized that the key question for ESA section 7 purposes is, as explained in *National Association of Home Builders,* whether the action is ''discretionary'' with the agency. To trigger Section 7 consultation, the statute must give the agency authority to ''consider the protection of threatened or endangered species as an end in itself'' in making the relevant decision. *National Association of Home Builders,* 551 U.S. at 671. In contrast to CWA section 402(b), FDEP noted that CWA sections 404(g)(2) and (3) expressly require that, when a state or tribe applies for assumption, the EPA must provide ''the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service'' an opportunity to comment on a state application for assumption of the CWA section 404 program. Relatedly, CWA section 404(h)(1) requires the EPA, in making a determination of whether to approve the state or tribal program, to ''tak[e] into account any comments submitted by . . . the Secretary of the Interior, acting through the Director of [FWS]'' under CWA section 404(g). The FWS is responsible for the implementation of the ESA and its consultation requirements. Thus, FDEP concluded that CWA section 404(g) requires the EPA to receive and consider input specifically focused on the protection of threatened and endangered species.

Second, FDEP noted that CWA section 404(h)(1) requires the EPA, in deciding whether to approve state or tribal assumption of the CWA section 404 program, to determine whether the state has authority ''[t]o issue permits which, . . . apply, and assure compliance with, any applicable requirement of this section, including, but not limited to, the guidelines established under section (b)(1) of this section . . . .'' The CWA section 404(b)(1) Guidelines, codified at 40 CFR part 230, provide that: ''No discharge of dredged or fill material shall be permitted if it . . . [j]eopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or results in likelihood of the destruction or adverse modification of [critical] habitat.'' 40 CFR 230.10(b)(3) (emphasis added). By requiring the EPA to take into account the views of the Services and by incorporating consideration of ''jeopardy'' to species and ''adverse modification'' of critical habitat via the CWA section 404(b)(1) Guidelines, FDEP concluded that CWA sections 404(g) and (h) expressly require the EPA to determine whether the state or tribe has adequate authority to apply and assure compliance with the substantive requirements of the ESA. FDEP pointed out that neither requirement is part of the EPA's CWA section 402(b) delegation decision.

Unlike under CWA section 402(b), FDEP viewed the EPA as possessing discretion under CWA sections 404(g) and (h) to ''consider the protection of threatened and endangered species as an end in itself,'' *National Association of Home Builders,* 551 U.S. at 671, in determining whether to approve a state's application to assume the CWA section 404 program. FDEP in its white paper cited excerpts from the legislative history and case law that it viewed as supporting its position that the EPA's decision as to whether to approve or disapprove state CWA section 404 programs is ''discretionary'' within the meaning of 40 CFR part 402.

III. Request for Comment

The EPA is seeking public comment regarding whether to reconsider its position that it lacks discretionary involvement or control within the meaning of 50 CFR 402.03 when acting on a state or tribal application to administer the CWA section 404 program to trigger the requirements of section 7 of the ESA, based on the positions articulated in the FDEP white paper, as well as any other considerations that may be relevant to this issue, and consequently whether the EPA can and should engage in one-time ESA section 7 consultation with the Services in connection with the EPA's initial review of a state or tribal request to assume the CWA section 404 program.

To aid in its consideration of this issue, the EPA is taking comment as to whether, and on what basis, the EPA's approval of a state or tribe's program under CWA section 404(h) is a discretionary agency action for the purpose of ESA compliance. Specifically, the EPA seeks comment on whether the EPA should reconsider the position articulated in its 2010 Letter to ECOS and ASWM that in deciding whether to approve or disapprove a state's or tribe's CWA section 404 program, the EPA lacks discretion to consider the protection of threatened or endangered species, and therefore that this decision does not trigger ESA section 7 consultation. The EPA seeks comment on the question as to whether the Agency should, alternatively, adopt the position articulated in the FDEP white paper that the EPA's decision as to whether to approve or disapprove a state or tribe's CWA section 404 program provides the EPA with discretion warranting consultation under ESA section 7. The EPA requests commenters' views as to the legal viability of this potential interpretation as well as the programmatic implications of this interpretation, including its implications for existing state CWA section 404 programs and for permit applicants and permittees.

The EPA's docket for this document includes a number of background documents, including the 2010 Letter to ECOS and ASWM, the FDEP white paper, excerpts from the legislative history of CWA sections 404(g) and (h), and other documents to assist commenters as they consider the EPA's request for comment.

David P. Ross,

Assistant Administrator, Office of Water.

[FR Doc. 2020–10913 Filed 5–20–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0635; FRL–10009–79–ORD]

Board of Scientific Counselors (BOSC) Chemical Safety for Sustainability and Health and Environmental Risk Assessment Subcommittee Meeting—May 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Chemical Safety for Sustainability and Health and Environmental Risk Assessment (CSS–HERA) Subcommittee to review their responses to charge questions on the draft FY 19–22 Strategic Research Action Plan (StRAP). Due to unforeseen administrative circumstances, EPA is announcing this meeting with less than 15 calendar days' notice.

DATES: The videoconference meeting will be held on Wednesday, May 27, 2020, from 1 p.m. to 4 p.m. (EDT). Meeting times are subject to change. This meeting is open to the public. Those who wish to attend must register by May 26, 2020. Comments must be received by May 25, 2020, to be considered by the subcommittee. Requests for the draft agenda or making a presentation at the meeting will be accepted until May 25, 2020.

ADDRESSES: Instructions on how to connect to the videoconference will be provided upon registration at *https://www.eventbrite.com/e/us-epa-bosc-chemical-safety-for-sustainability-css-and-health-and-environmental-risk-assessment-tickets-104092351024.* Attendees should register no later than on May 26, 2020.

Submit your comments to Docket ID No. EPA–HQ–ORD–2015–0635 by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Note:* Comments submitted to the *www.regulations.gov* website are anonymous unless identifying information is included in the body of the comment.
- *Email:* Send comments by electronic mail (email) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2015–0635.
- *Note:* Comments submitted via email are not anonymous. The sender's email will be included in the body of the comment and placed in the public docket which is made available on the internet.

Instructions: All comments received, including any personal information provided, will be included in the public docket without change and may be made available online at *www.regulations.gov.* Information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute will not be included in the public docket, and should not be submitted through *www.regulations.gov* or email. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

Public Docket: Publicly available docket materials may be accessed *Online* at *www.regulations.gov.*

Copyrighted materials in the docket are only available via hard copy. The telephone number for the ORD Docket Center is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO), Tom Tracy, via phone/voice mail at: (202) 564–6518; or via email at: *tracy.tom@epa.gov.* Any member of the public interested in receiving a draft agenda, attending the meeting, or making a presentation at the meeting should contact Tom Tracy.

SUPPLEMENTARY INFORMATION: The Board of Scientific Counselors (BOSC) is a federal advisory committee that provides advice and recommendations to EPA's Office of Research and Development on technical and management issues of its research programs. Meeting agenda and materials will be posted to *https://www.epa.gov/bosc.*

Proposed agenda items for the meeting include but are not limited to the following: Review of charge questions, draft subcommittee report, and subcommittee discussion.

Information on Services Available: For information on translation services, access, or services for individuals with disabilities, please contact Tom Tracy at (202) 564–6518 or *tracy.tom@epa.gov.* To request accommodation of a disability, please contact Tom Tracy at least ten days prior to the meeting to give the EPA adequate time to process your request.

Authority: Pub. L. 92–463, section 1, Oct. 6, 1972, 86 Stat. 770.

Dated: May 14, 2020.

Mary Ross,

Director, Office of Science Advisor, Policy, and Engagement.

[FR Doc. 2020–10994 Filed 5–20–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 18–122, DA 20–503; FRS 16776]

Wireless Telecommunications Bureau Announces the Process for Accelerated Relocation Elections by Eligible Space Station Operators in the 3.7–4.2 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireless Telecommunications Bureau (Bureau) announces the Accelerated Relocation Election Process by which eligible space station operators can commit to relocating existing services in 3.7 GHz band on a two-phased accelerated schedule. In *Expanding Flexible Use of the 3.7 to 4.2 GHz Band Report and Order,* GN Docket No. 18–122, Report and Order and Order of Proposed Modification, FCC 20–22 (Mar. 3, 2020) (*Report and Order*), the Commission established a deadline of December 5, 2025, for incumbent space station operators to complete the transition of their operations to the upper 200 megahertz of the band, while providing an opportunity for accelerated clearing of the band by allowing eligible space station operators to commit to relocate voluntarily on a two-phased accelerated schedule. The *Report and Order* required eligible space station operators committing to accelerated clearing to make their election by May 29, 2020.

DATES: Elections are due on or before May 29, 2020.

ADDRESSES: You may submit elections, identified by GN Docket No. 18–122, by any of the following methods:

- *Electronic Filers:* Elections may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/* in docket number GN 18–122.
- *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 (March 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.

FOR FURTHER INFORMATION CONTACT: Becky Tangren, Wireless Telecommunications Bureau, at *Becky.Tangren@fcc.gov* or 202–418–7178.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice, *Wireless Telecommunications Bureau Announce the Process for Accelerated Relocation Elections by Eligible Space Station Operators in the 3.7–4.2 GHz Band,* GN Docket No. 18–122, DA 20–503 (*Public Notice*), released on May 11, 2020. The complete text of the *Public Notice,* is available on the Commission's website at *https://www.fcc.gov/document/wtb-announces-accelerated-relocation-election-process-37-ghz-band* or by using the search function for GN Docket No. 18–122 on the Commission's ECFS web page at *www.fcc.gov/ecfs.*

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file elections on or before the date indicated on the first page of this document.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Ex Parte Rules: This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* 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 presenters written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the 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.

Synopsis: With this Public Notice, the Wireless Telecommunications Bureau (WTB) announces the process for eligible space station operators to make an Accelerated Relocation Election. On March 3, 2020, the Federal Communications Commission (Commission) released the *Expanding Flexible Use of the 3.7 to 4.2 GHz Band Report and Order,* which adopted new rules to make 280 megahertz of mid-band spectrum available for flexible use through a Commission-administered public auction of overlay licenses, plus a 20 megahertz guard band, throughout the contiguous United States by transitioning existing services out of the lower portion and in to the upper 200 megahertz of the 3.7–4.2 GHz band (C-band).

The *Report and Order* established a deadline of December 5, 2025, for incumbent space station operators to complete the transition of their operations to the upper 200 megahertz of the band, while providing an opportunity for accelerated clearing of the band by allowing eligible space station operators to commit to relocate voluntarily on a two-phased accelerated schedule, with a Phase I deadline of December 5, 2021, and a Phase II deadline of December 5, 2023.

The *Report and Order* required eligible space station operators committing to accelerated clearing to make their election by May 29, 2020 to provide potential bidders with adequate certainty regarding the clearing date and payment obligations associated with each license should they become overlay licensees. The *Report and Order* detailed the commitments that eligible space station operators must make when filing an Accelerated Relocation Election. By electing accelerated relocation, an eligible space station operator voluntarily commits adhere to the requirements, policies, and procedures established in the *Report and Order.* Commitments include: paying the administrative costs of the Relocation Payment Clearinghouse until the Commission awards licenses to the winning bidders in the auction, at which time the eligible space station operator will be reimbursed for those administrative costs that it paid; relocating its own services out of the lower 300 megahertz by the Accelerated Relocation Deadlines (both Phase I and Phase II) and taking responsibility for relocating its associated incumbent earth stations by those same deadlines; planning, coordinating, and performing (or contracting for the performance of) all the tasks necessary to migrate any incumbent earth station that receives or sends signals to a space station owned by that operator, whether the satellite service provider is in direct privity of contract with the earth station operator or indirectly through another entity such as a programmer; in short, the space station operator must provide a turnkey solution to the transition; and cooperating in good faith with the Relocation Coordinator and paying all administrative costs of the Relocation Coordinator if it is selected by the committee of electing space station operators.

The *Report and Order* also described a schedule of decreasing accelerated relocation payments for the six months following each Accelerated Relocation Deadline if an eligible space station operator that commits to accelerated relocation fails to meet its deadline. If an eligible space station operator that commits to accelerated relocation fails to complete the transition within six months of the relevant deadline, its associated accelerated relocation payment will drop to zero.

The *Report and Order* directed that eligible space station operators that choose to clear on the accelerated timeframe in exchange for an accelerated relocation payment must do so via a written commitment by filing an Accelerated Relocation Election in GN Docket No. 18–122. Such elections are public and irrevocable. Pursuant to the *Report and Order,* WTB prescribes the following format for filing an Accelerated Relocation Election: The election must state that the eligible space station operator elects to perform an accelerated relocation, understands and accepts the commitments made when filing an Accelerated Relocation Election, and understands and accepts the reduction in payments for missing deadlines as outlined in the *Report and Order.* The election must be signed by a company officer of the eligible space station operator with authority to bind the company. The election must acknowledge the Commission's authority to adopt the accelerated relocation payment and the reduction in payments for missing deadlines. The election must acknowledge that sufficient eligible space station operators must elect accelerated relocation such that at least 80% of the total possible accelerated relocation payments are accepted for the Commission to accept elections and require overlay licensees to pay accelerated relocation payments.

The information collection requirements were approved by OMB on May 5, 2020 under OMB control number 3060–1272.

If an eligible space station operator elects not to make an Accelerated Relocation Election, that operator will forfeit its eligibility to receive accelerated relocation payments, even if it completes all tasks by the Accelerated Relocation Deadlines and files a Certification of Accelerated Relocation.

Federal Communications Commission.

Katherine Harris,

Deputy Chief, Mobility Division, Wireless Telecommunications Bureau.

[FR Doc. 2020–11004 Filed 5–20–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT

Board Member Meeting

May 27, 2020—10:00 a.m., Telephonic

Open Session

1. Approval of the Minutes of the April 27, 2020 Board Meeting
2. Monthly Reports
   (a) Participant Activity Report
   (b) Investment Performance
   (c) Legislative Report
3. Quarterly Reports
   (d) Metrics
4. Internal Audit Report

Executive Session

Information covered under 5 U.S.C. 552b(c)(7).

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Dial-in (listen only) information: Number: 1–877–446–3914, Code: 5962888.

Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: May 18, 2020.

Megan Grumbine,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2020–11003 Filed 5–20–20; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-20–20NT; Docket No. CDC–2020–0054]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled *Using Real-time Prescription and Insurance Claims Data to Support the HIV Care Continuum* which will collect data to evaluate the efficacy of using administrative insurance and prescription claims (billing) data to identify and intervene upon persons with HIV who fail to fill antiretroviral (ARV) prescriptions.

DATES: CDC must receive written comments on or before July 20, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0054 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: *Submit all comments through the Federal eRulemaking portal* (*regulations.gov*) *or by U.S. mail to the address listed above.*

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Using Real-time Prescription and Insurance Claims Data to Support the HIV Care Continuum—New—National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Use of HIV surveillance data to identify out-of-care persons is one strategy for identifying and re-engaging out-of-care persons and is called Data-to-Care or ''D2C.'' Data-to-Care uses laboratory reports (*i.e.,* CD4 and HIV viral load test results) received by a health department's HIV surveillance program as markers of HIV care. In the current D2C model, there is a delay in the identification of out-of-care persons due to the time interval between recommended monitoring tests (*i.e.,* every three to six months) and the subsequent reporting of these tests to surveillance.

Insurance and prescription administrative claims (billing) data can be used to identify persons who fail to fill antiretroviral (ARV) prescriptions and who are at risk for becoming out of care. Because most ARVs are prescribed as a 30-day supply of medication, prescription claims can be used to identify persons who are not filling ARV prescriptions on a monthly basis. Tracking ARV refill data can, therefore, be a more real-time indicator of poor adherence and can act as a harbinger of potential poor retention in care. Using real time insurance and prescription claims data to identify persons who fail to fill ARV prescriptions, and to intervene, could have a significant impact on ARV therapy adherence, viral suppression and potentially on retention in care.

The purpose of the *A*ntiretroviral *I*mprovement among *M*edicaid *E*nrollees (AIMS) study is to develop, implement and evaluate a D2C strategy that uses Medicaid insurance and prescription claims data to identify (1) persons with HIV who have never been prescribed ARV therapy and (2) persons with HIV who fail to pick up prescribed ARV medications in a timely manner and to target these individuals for adherence interventions.

A validated HIV case identification algorithm will be applied to the Virginia Medicaid database to identify persons with HIV who have either never filled an ARV prescription or have not filled an ARV prescription within >30 to <90 days of the expected fill date. Deterministic and probabilistic methods will be used to link this list to Virginia Department of Health's (VDH) Care Markers (an extract of the VDH HIV surveillance database) database. Individuals that are matched across the two databases (indicating that the persons are both enrolled in Medicaid and confirmed HIV positive) are eligible for study participation. Additional eligibility criteria include age 19–64 years and continuous enrollment in Virginia Medicaid for the preceding 12 months.

Once identified, individuals will be randomized to receive either an intervention or usual care. Participants in the intervention arm will be assigned to receive either a provider-level intervention or a patient-level intervention, depending on need; providers of study eligible participants who have never been prescribed ARV therapy (ART) will receive a provider-level intervention and participants who are >30 to <90 days late filling their ARV prescriptions will receive a patient-level intervention. Potential participants will be contacted by a VDH Linkage Coordinator or Study Coordinator to explain the study and obtain consent for participation.

The provider-level intervention will consist of a peer-to-peer clinician consultation delivered by members of Virginia Department of Health's AIDS Drug Assistance Program (ADAP) Advisory Committee. The peer-to-peer clinician consultations will involve introduction or reinforcement of HIV clinical guidelines for ART initiation, strategies to optimize ART adherence, and resources for supporting adherence for people with HIV. The consultation will be tailored to the needs of the provider.

The patient-level intervention has two phases. In Phase I, a Linkage Coordinator will contact participants to discuss the participants' adherence barriers. Once the participant's adherence barriers are identified, the participant will be referred to appropriate resources to assist them in overcoming their adherence barrier(s). Phase II is intended for patients who were enrolled in Phase I but who failed to fill their ARV prescriptions in the subsequent 30 days of the Phase I consultation, and for participants who are >60 to <90 days late at the time the participant was determined to be study eligible. In Phase II, the Linkage Coordinator will lead a similar consultation as in Phase I but will probe for more complex adherence barriers (*e.g.,* mental health concerns) and referrals will be made accordingly. The participant will also be offered PositiveLinks, an evidence-informed mobile application (''app'') which is designed to support ART adherence and retention in care. PositiveLinks provides daily queries of stress, mood, and medication adherence; weekly quizzes on general and HIV-specific understanding; appointment and medication reminders, curated resources, a community message board, direct messaging with the Linkage Coordinator, and contact information for participants' providers.

All analyses will be conducted at the patient level. Persons within the intervention and control arms will be followed for 12 months to compare the primary study outcome of HIV viral suppression (HIV RNA < 200 copies/mL).

CDC requests OMB approval to collect standardized information, from 500 AIMS study participants (including 460 patients and 40 providers) and 500 controls over the three year project period. Secondary data will be abstracted from the Virginia Medicaid and Virginia Department of Health Care Marker databases to determine study eligibility, to conduct the patient- and provider-level interventions, and to determine study outcomes. During the patient-level intervention data will be collected on participants' adherence barriers; this information will be used to refer participants to appropriate resources to assist their adherence to ART. During the provider-level intervention data will be collected to inform the peer-to-peer clinician consultation.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Linkage Coordinator	Verbal consent (patient)	460	1	15/60	115
Study Coordinator	Verbal consent (provider)	40	1	15/60	10
Linkage Coordinator	PositiveLinks Program and Services Agreement.	100	1	60/60	100
VCU Data Manager	Medicaid data abstraction	1	12	60/60	12
VDH Surveillance Epidemiologist	Care Marker data abstraction	1	12	60/60	12
Linkage Coordinator	Phase I interview and Phase I data elements.	460	1	30/60	230
Linkage Coordinator	Phase II interview and Phase II data elements.	100	1	30/60	50
Linkage Coordinator	PositiveLinks data abstraction	1	4	15/60	1
ADAP Advisory Committee member	Clinician consultation and Clinician consultation data elements.	40	1	30/60	20
Total					550

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–10999 Filed 5–20–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–20DV]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Chronic Q Fever in the United States: Enhanced Clinical Surveillance'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on December 23, 2019 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Chronic Q Fever in the United States: Enhanced Clinical Surveillance – New – National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Q fever is a worldwide zoonosis caused by *Coxiella burnetii* with acute and chronic disease presentations. Chronic Q fever can manifest months to years after the primary infection and is rare, occurring in <5% of persons with an acute infection. Chronic Q fever can take on several clinical forms, including endocarditis, chronic hepatitis, chronic vascular infections, osteomyelitis, and osteoarthritis. In the United States, Q fever cases are reported via the National Notifiable Disease Surveillance System; however, limited information is collected the various clinical manifestation of chronic Q fever or patients pre-existing risk factors. Data on outcomes other than death or hospitalizations are not collected by the current surveillance. Because of this lack of data, the true burden and proportion of cases exhibiting endocarditis and other forms of chronic Q fever in the United States is unknown. We plan to establish an enhanced medical surveillance for chronic Q fever by working with consulting clinicians to gather additional and more specific clinical data not otherwise collected during the course of routine public health surveillance for chronic Q fever. This information will allow for better characterization of the clinical presentation and risk factors of chronic Q fever in the United States. The results will help characterize an under-recognized disease and provide valuable data to educate physicians on identifying and diagnosing these cases.

The survey will take approximately 20 minutes per individual. CDC requests

approval for five annual burden hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Physician	Chronic Q fever enhanced surveillance report form.	15	1	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–10998 Filed 5–20–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-20–20BY]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Pilot Project: Work Organization Risks to Short-haul Truck Drivers' Health & Safety (Survey) to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on November 20, 2019 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Pilot Project: Work Organization Risks to Short-haul Truck Drivers' Health & Safety—New—National Institute for Occupational Safety and Health (NIOSH),Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Commercial truck drivers face widely acknowledged safety risks on the job and are at an increased risk for heart disease, diabetes, hypertension, and obesity. Long and irregular work hours, lack of breaks, inadequate sleep, and little access to exercise facilities and healthy eating options contribute to drivers' health and safety problems. Additionally, health complications of obesity (*e.g.,* sleep apnea, type II diabetes) place truckers at even greater risk of roadway crashes. Much of what we know about work and health is based on knowledge gleaned from research on long-haul commercial drivers. Local short haul drivers are those who generally return home each night after work, and who travel no more than 150 miles from the employer's terminal each day (whereas long-haul drivers are away from home for long periods of time and drive much greater distances daily). This research addresses a gap in knowledge and responds to stakeholders' requests for research that examines work organization in local short-haul commercial driving. The purpose of this data collection is to learn more about the local short-haul trucking industry and how the complex interplay between job design and individual health behaviors affects the safety, health, and well-being of commercial drivers. NIOSH is requesting a 12-month OMB approval.

A survey will be used to collect cross-sectional data from 300 local short-haul commercial drivers. Drivers will answer questions about work design, organizational policies, occupational stressors, physical health, safety, and mental well-being. The data collected will be used to characterize work organization in local short-haul commercial driving and analyzed to examine the association between work design and driver physical health, mental health, well-being, and safety.

Stakeholders in trucking associations have agreed to promote participation in the study amongst their member organizations. A sample of 300 drivers will be recruited from across several commercial driving companies over a six-month time period. This is a cross-sectional survey. Drivers will complete the survey only one time. It is estimated that the survey will take about 30 minutes to complete. All responses are anonymous, and no personally identifiable information will be collected.

There are no costs to respondents other than their time. The total estimated burden is 174 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in minutes per hour)
Participant Eligibility Screening of drivers	Participant Eligibility Screening Form	300	1	5/60
L/SH truck drivers	Non Respondent Questionnaire	3	1	5/60
L/SH truck drivers	Hardcopy Survey Sections 1–7	297	1	25/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–10997 Filed 5–20–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-20–0106; Docket No. CDC–2020–0056]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Information Collections to Advance State, Tribal, Local, and Territorial (STLT) Governmental Agency and System Performance, Capacity, and Program Delivery. This collection allows CDC to collaborate with partners throughout the nation and the world to monitor health, detect and investigate health problems, conduct research to enhance prevention, develop and advocate sound public health policies, implement prevention strategies, promote healthy behaviors, foster safe and healthful environments, and provide leadership and training.

DATES: CDC must receive written comments on or before July 20, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0056 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Information Collections to Advance State, Tribal, Local, and Territorial (STLT) Governmental Agency and System Performance, Capacity, and Program Delivery—Extension—Center for State, Tribal, Local and Territorial Support (CSTLTS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the Department of Health and Human Services is to enhance the health and well-being of all Americans. As part of HHS, CDC conducts critical science and provides health information to people and communities to save lives and protect people from health threats. To this end, CDC and HHS seek to accomplish their mission by collaborating with partners throughout the nation and the world to monitor health, detect and investigate health problems, conduct research to enhance prevention, develop and advocate sound public health policies, implement prevention strategies, promote healthy behaviors, foster safe and healthful environments, and provide leadership and training.

CDC is requesting a three-year approval to extend a generic clearance to collect information related to domestic public health issues and services that affect and/or involve state, tribal, local and territorial (STLT) government entities.

The respondent universe is comprised of STLT governmental staff or delegates acting on behalf of a STLT agency involved in the provision of essential public health services in the United States. Delegate is defined as a governmental or non-governmental agent (agency, function, office or individual) acting for a principal or submitted by another to represent or act on their behalf. The STLT agency is represented by a STLT entity or delegate with a task to protect and/or improve the public's health.

Information will be used to assess situational awareness of current public health emergencies; make decisions that affect planning, response and recovery activities of subsequent emergencies; fill CDC and HHS gaps in knowledge of programs and/or STLT governments that will strengthen surveillance, epidemiology, and laboratory science; improve CDC's support and technical assistance to states and communities. CDC and HHS will conduct brief data collections, across a range of public health topics related to essential public health services.

CDC estimates up to 30 data collections with STLT governmental staff or delegates, and 10 data collections with local/county/city governmental staff or delegates will be conducted on an annual basis. Ninety-five percent of these data collections will be web-based and five percent telephone, in-person, and focus groups. The total annualized burden of 54,000 hours is based on the following estimates.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per respondent (in hrs.)	Total burden (in hrs.)
State, Territorial, or Tribal government staff or delegate.	Web, telephone, in-person, focus group.	800	30	1	24,000
Local/County/City government staff or delegate.	Web, telephone, in-person, focus group.	3,000	10	1	30,000
Total					54,000

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–11001 Filed 5–20–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–FY–2020; Docket No. CDC–2020–0055]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Preventive Health and Health Services Block Grant. The PHHS Block Grant allows awardees to prioritize the use of funds to fill funding gaps in programs that deal with leading causes of death and disability, as well as the ability to respond rapidly to emerging health issues, including outbreaks of food-borne infections and water-borne diseases.

DATES: CDC must receive written comments on or before July 20, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0055, by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov*.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Preventive Health and Health Services Block Grant (OMB Control No. 0920–0106, Exp. 08/31/2022)—Revision—Center for State, Tribal, Local, and Territorial Support (CSTLTS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC's Center for State, Tribal, Local, and Territorial Support (CSTLTS) plays a vital role in helping health agencies work to enhance their capacity and improve their performance to strengthen the public health system on all levels. CSTLTS is CDC's primary connection to health officials and leaders of state, tribal, local, and territorial public health agencies, as well as to other government leaders who work with health departments.

CSTLTS administers the Preventive Health and Health Services (PHHS) Block Grant funding for health promotion and disease prevention programs. Sixty-one awardees (50 states, the District of Columbia, two American Indian tribes, five U.S. territories, and three freely associated states) receive block grant funds to address locally defined public health needs in innovative ways. The PHHS Block Grant allows awardees to prioritize the use of funds to fill funding gaps in programs that deal with leading causes of death and disability, as well as the ability to respond rapidly to emerging health issues, including outbreaks of food-borne infections and water-borne diseases. CSTLTS ensures that the CDC PHHS Block Grant Program Manager and recipients account for funds in accordance with legislative mandates. Each awardee is required to submit a work plan with its selected health outcome objectives, as well as descriptions of the health problems, identified target populations (including portions of those populations disproportionately affected by the health problems), and activities to be addressed in the planned work. CDC will use the Block Grant Information System to collect recipient data, monitor awardees' progress, identify activities and personnel supported with Block Grant funding, conduct compliance reviews of Block Grant awardees, and promote the use of evidence-based guidelines and interventions.

CDC requests OMB approval for revision to an existing information collection request to accommodate the needed updates to the system and templates used to collect the information. As specified in the authorizing legislation, CDC currently collects information from Block Grant awardees to monitor their objectives and activities. Awardees will submit information on the following:

Recipient information: Unique identifying information about each recipient.

Work plan: Information about objectives, activities, and the populations to be addressed each year.

Annual Progress Report: Information about success and progress toward meeting health objectives.

Since 2008, CDC has collected this information using a web-based electronic system, the Block Grant Management Information System (BGMIS). Beginning with the FY2021 award, CDC will be using a new information management system, the Block Grant Information System (BGIS) to collect this information. The new system will collect substantially the same information as the old system but will offer a variety of updates and improvements. Examples of improvements include updated technological infrastructure, updated Healthy People Objectives (from 2020 to 2030) for awardees to use when planning programs, usability improvements, and redesigned instruments to capture data in more useful formats for both the recipients and reporting purposes.

The respondent universe will include PHHSBG Block Grant Coordinators (n=61). All modules will be accessed electronically through the BGIS system. The total annualized estimated burden is 1,525 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Recipient Information	PHHS Block Grant Coordinator	61	1	2	122
Work Plan	PHHS Block Grant Coordinator	61	1	12	732
PHHS Block Annual Progress Report.	PHHS Block Grant Coordinator	61	1	11	671
Total					1,525

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–11000 Filed 5–20–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2014–N–1533; FDA–2019–N–2313; FDA–2013–N–0825; FDA–2013–N–1427; FDA–2013–N–1393; FDA–2013–N–0719; FDA–2013–N–0796; and FDA–2018–D–4711]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *http://www.reginfo.gov/public/do/PRAMain.* 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.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
National Panel of Tobacco Consumer Studies	0910–0815	2/28/2023
Study of Oncology Indications in Direct-to-Consumer Television Advertising	0910–0885	2/28/2023
Premarket Approval of Medical Devices	0910–0231	3/31/2023
Hazard Analysis and Critical Control Point Procedures for the Safe and Sanitary Processing of Juice	0910–0466	3/31/2023
Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions	0910–0233	4/30/2023
Planning for the Effects of High Absenteeism to Ensure Availability of Medically Necessary Drug Products	0910–0675	4/30/2023
Testing Communications on Medical Devices and Radiation-Emitting Products	0910–0678	4/30/2023
Requests for Nonbinding Feedback After Certain FDA Inspections of Device Establishments	0910–0886	4/30/2023

Dated: May 18, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–10977 Filed 5–20–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1291]

Stakeholder Engagement on ICH E6: Guideline for Good Clinical Practice; Public Web Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public web conference.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing a free public web conference for discussion of the International Council for Harmonisation's (ICH's) good clinical practice guidelines, ICH E6. This public web conference, ''Stakeholder Engagement on ICH E6: Guideline for Good Clinical Practice,'' is being convened and supported by a cooperative agreement between the Clinical Trials Transformation Initiative (CTTI) and FDA. The purpose of the web conference is to capture stakeholder experiences with current ICH E6 guidelines for good clinical practice (GCP) and to gather stakeholder input to further inform the development of an updated guideline, ICH E6(R3).

DATES: The public web conference will be held on Thursday and Friday, June 4 and 5, 2020, from 10 a.m. to 1 p.m. Eastern Time. Further details on the web conference (including times) are available at the website provided under **ADDRESSES**. See the **SUPPLEMENTARY INFORMATION** section for details.

ADDRESSES: The web conference will be held online. Meeting details and background materials, including the web conference link, are available at the following website: *https://www.ctti-clinicaltrials.org/briefing-room/meetings/ich-e6-guideline-good-clinical-practice-stakeholder-engagement.*

FOR FURTHER INFORMATION CONTACT: Suzanne Pattee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3328, Silver Spring, MD 20993, 301–796–1706, *Suzanne.Pattee@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

To support GCP renovation, FDA and ICH are seeking stakeholder input to develop a new ICH guideline, ''ICH E6(R3): Guideline for Good Clinical Practice,'' to enable flexible application of those guidelines to interventional clinical trials, including innovative clinical trial designs and data sources. ICH E6(R3) materials, including the ICH Reflection Paper on ''GCP Renovation,'' concept paper, business plan, work plan, and an expert list, as well as the current guideline, ''ICH E6(R2): Guideline for Good Clinical Practice,'' are available on the ICH website: *https://www.ich.org/page/efficacy-guidelines.*

The purpose of the public web conference announced in this notice is to obtain input on stakeholder experiences with the current GCP guideline (ICH E6(R2)) and suggested changes to improve the guideline's applicability to the changing clinical trial landscape.

II. Topics for Discussion at the Public Web Conference

During the public web conference, speakers and participants will cover a range of GCP issues to inform revisions to the current GCP guidelines. Topics for discussion will include and are not limited to: (1) Issues with application of current guidelines to traditional interventional clinical trials, (2) ways to modify the guideline to address innovative trial designs, (3) use of digital technology tools, (4) new data sources, and (5) other topics relating to GCPs.

III. Participating in the Public Web Conference

Registration: To register for the free public web conference, complete the registration form at *https://www.ctti-clinicaltrials.org/briefing-room/meetings/ich-e6-guideline-good-clinical-practice-stakeholder-engagement.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number.

Streaming Public Web Conference: This live web conference will be recorded and archived and will be available after the event at the event website. Persons interested in participating in the live web conference are encouraged to register in advance (see *Registration*). The live web conference will also be available at the website above on the day of the event without preregistration. Detailed information is available at the following website: *https://www.ctti-clinicaltrials.org/briefing-room/meetings/ich-e6-guideline-good-clinical-practice-stakeholder-engagement.*

Registered web conference participants will be sent technical system requirements in advance of the event. It is recommended that you review these technical system requirements prior to joining the streaming web conference of the public event.

FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Meeting Materials: All event materials will be provided to registered attendees via email prior to the web conference and will be publicly available at the *https://www.ctti-clinicaltrials.org/briefing-room/meetings/ich-e6-guideline-good-clinical-practice-stakeholder-engagement.*

Transcripts: Please be advised that transcripts of the public web conference will not be available.

Dated: May 15, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–10975 Filed 5–20–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1242]

Advisory Committee; Arthritis Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Arthritis Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Arthritis Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until April 5, 2022.

DATES: Authority for the Arthritis Advisory Committee would have expired on April 5, 2020, unless the Commissioner had formally determined that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Yinghua Wang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *AAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under 41 CFR 102–3, FDA is announcing the renewal of the Arthritis Advisory Committee. The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases, and makes appropriate recommendations to the Commissioner of Food and Drugs.

Under its Charter, the Committee shall consist of a core of 11 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of arthritis, rheumatology, orthopedics, epidemiology or statistics, analgesics, and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/human-drug-advisory-committees/arthritis-advisory-committee* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the Committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This document is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please check *https://www.fda.gov/advisory-committees.*

Dated: May 18, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–10996 Filed 5–20–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Clinical Care Commission

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Clinical Care Commission (the Commission) will conduct a virtual meeting on June 26, 2020. The Commission is charged to evaluate and make recommendations to the U.S. Department of Health and Human Services (HHS) Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to diabetes and its complications.

DATES: The meeting will take place on June 26, 2020, from 1 p.m. to approximately 5 p.m. Eastern Daylight time (EDT).

ADDRESSES: The meeting will be held online via webinar. To register to attend the meeting, please visit the registration website at *https://kauffmaninc.adobeconnect.com/nccc_june2020/event/event_info.html.*

FOR FURTHER INFORMATION CONTACT: Jennifer Anne Bishop, ScD, MPH, Designated Federal Officer, National Clinical Care Commission, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Suite 420, Rockville, MD 20852. Email: *OHQ@hhs.gov.*

SUPPLEMENTARY INFORMATION: The National Clinical Care Commission Act (Pub. L. 115–80) requires the HHS Secretary to establish the National Clinical Care Commission. The Commission consists of representatives of specific federal agencies and non-federal individuals and entities who represent diverse disciplines and views. The Commission will evaluate and make recommendations to the HHS Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to diabetes and its complications.

The seventh meeting will be held virtually, and will consist of updates from the Commission's three subcommittees and a discussion of public comments and outreach to stakeholder organizations. The final meeting agenda will be available prior to the meeting at *https://health.gov/our-work/health-care-quality/national-clinical-care-commission/meetings.*

Public Participation at Meeting: The Commission invites public comment on issues related to the Commission's charge. There will be an opportunity for limited oral comments (each no more than 3 minutes in length) at this virtual meeting. Virtual attendees who plan to provide oral comments at the Commission meeting during a designated time must register prior to the meeting at *https://kauffmaninc.adobeconnect.com/nccc_june2020/event/event_info.html.*

Written comments are welcome throughout the entire development process of the Commission's work and may be emailed to *OHQ@hhs.gov.* Written comments should not exceed three pages in length.

Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate the special accommodation when registering online or by notifying Jennifer Gillissen at *jennifer.gillissen@kauffmaninc.com* by June 12, 2020.

Authority: The National Clinical Care Commission is required under the National Clinical Care Commission Act (Pub. L. 115–80). The Commission is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: 05/15/2020.

Carter Blakey,

Acting Director, Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health.

[FR Doc. 2020–10925 Filed 5–20–20; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Purchased/Referred Care Delivery Area Designation for the Little Shell Tribe of Chippewa Indians of Montana

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Indian Health Service (IHS) is establishing the geographic boundaries of the Purchased/Referred Care Delivery Area (PRCDA) (formerly Contract Health Service Delivery Area or CHSDA) for the newly federally recognized Little Shell Tribe of Chippewa Indians of Montana.

DATES: This notice is applicable as of June 22, 2020.

ADDRESSES: This notice can be found at *https://www.federalregister.gov.* Written requests for information or comments submitted by postal mail or delivery should be addressed to Evonne Bennett, Acting Director, Division of Regulatory and Policy Coordination, Indian Health Service, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: CDR John Rael, Director, Office of Resource Access and Partnerships, Indian Health Service, 5600 Fishers Lane, Mail Stop: 10E85C, Rockville, Maryland 20857. Telephone (301) 443–0969 (This is not a toll free number).

SUPPLEMENTARY INFORMATION: The IHS currently provides services under regulations in effect on September 15, 1987, and republished at 42 CFR part 136, subparts A–C. When Tribes are recognized under Federal law, either Congress legislatively designates counties to serve as PRCDAs, or the Director, IHS, exercises reasonable administrative discretion to designate PRCDAs to effectuate the intent of Congress for these Tribes. The Director, IHS, publishes a notice in the **Federal Register** *(FR)* when there are revisions or updates to the list of PRCDAs, including the designation of PRCDAs for newly recognized or restored Tribes.

At 42 CFR part 136 Subpart C, a PRCDA is defined as the geographic area within which Purchased/Referred Care (PRC) will be made available by the IHS to members of an identified Indian community who reside in the area. The regulations provide that, unless otherwise designated, a PRCDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 136.22(a)(6)). Residence within a PRCDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 136.12, creates no legal entitlement to PRC but only potential eligibility for services. Services needed but not available at an IHS or Tribal facility are provided under the PRC program depending on the availability and accessibility of alternate resources in accordance with the regulations.

Under Public Law 116–92 (the ''Act''), the Little Shell Tribe of Chippewa Indians of Montana was officially recognized as an Indian Tribe within the meaning of Federal law. The Act sets forth the service area for the newly recognized Tribe for the purpose of the delivery of Federal services and benefits to Tribal members. The purpose of this FR notice is to notify the public of the establishment of the PRCDA for the newly recognized Little Shell Tribe of Chippewa Indians of Montana. Consistent with the Act, IHS is designating the counties of Blaine, Cascade, Glacier, and Hill in the State of Montana as the Tribe's PRCDA.

Under 42 CFR 136.23, those otherwise eligible Indians who do not reside on a reservation but reside within a PRCDA must be either members of the Little Shell Tribe of Chippewa Indians of Montana or maintain close economic and social ties with the Tribe. The financial resources required to meet the immediate needs of the Little Shell Tribe of Chippewa Indians of Montana members residing in the PRCDA are determined by the IHS, through consultation with the Tribe and will be placed in the Billings Area PRC budget.

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act.

PURCHASED/REFERRED CARE DELIVERY AREAS

Tribe/reservation	County/state
Ak Chin Indian Community	Pinal, AZ.
Alabama-Coushatta Tribes of Texas	Polk, TX.[1]
Alaska	Entire State.[2]
Arapahoe Tribe of the Wind River Reservation, Wyoming	Hot Springs, WY, Fremont, WY, Sublette, WY.
Aroostook Band of Micmacs	Aroostook, ME.[3]
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.	Daniels, MT, McCone, MT, Richland, MT, Roosevelt, MT, Sheridan, MT, Valley, MT.
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin.	Ashland, WI, Iron, WI.
Bay Mills Indian Community, Michigan	Chippewa, MI.
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana.	Glacier, MT, Pondera, MT.
Brigham City Intermountain School Health Center, Utah	Permanently closed on May 17, 1984.[4]
Burns Paiute Tribe	Harney, OR.
California	Entire State, except for the counties listed in the footnote.[5]
Catawba Indian Nation (AKA Catawba Tribe of South Carolina).	All Counties in SC,[6] Cabarrus, NC, Cleveland, NC, Gaston, NC, Mecklenburg, NC, Rutherford, NC, Union, NC.
Cayuga Nation	Alleghany, NY,[7] Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA.
Chickahominy Indian Tribe	New Kent, VA, James City, VA, Charles City, VA, Henrico, VA.[8]
Chickahominy Indian Tribe—Eastern Division	New Kent, VA, James City, VA, Charles City, VA, Henrico, VA.[9]
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.	Corson, SD, Dewey, SD, Haakon, SD, Meade, SD, Perkins, SD, Potter, SD, Stanley, SD, Sully, SD, Walworth, SD, Ziebach, SD.
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana.	Chouteau, MT, Hill, MT, Liberty, MT.
Chitimacha Tribe of Louisiana	St. Mary Parish, LA.
Cocopah Tribe of Arizona	Yuma, AZ, Imperial, CA.
Coeur D'Alene Tribe	Benewah, ID, Kootenai, ID, Latah, ID, Spokane, WA, Whitman, WA.
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California.	La Paz, AZ, Riverside, CA, San Bernardino, CA, Yuma, AZ.
Confederated Salish and Kootenai Tribes of the Flathead Reservation.	Flathead, MT, Lake, MT, Missoula, MT, Sanders, MT.
Confederated Tribes and Bands of the Yakama Nation	Klickitat, WA, Lewis, WA, Skamania, WA,[10] Yakima, WA.
Confederated Tribes of Siletz Indians of Oregon	Benton, OR,[11] Clackamas, OR, Lane, OR, Lincoln, OR, Linn, OR, Marion, OR, Multnomah, OR, Polk, OR, Tillamook, OR, Washington, OR, Yamhill, OR.
Confederated Tribes of the Chehalis Reservation	Grays Harbor, WA, Lewis, WA, Thurston, WA.
Confederated Tribes of the Colville Reservation	Chelan, WA,[12] Douglas, WA, Ferry, WA, Grant, WA, Lincoln, WA, Okanogan, WA, Stevens, WA.
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians.	Coos, OR,[13] Curry, OR, Douglas, OR, Lane, OR, Lincoln, OR.
Confederated Tribes of the Goshute Reservation, Nevada and Utah.	The entire State of Nevada, Juab, UT, Tooele, UT.
Confederated Tribes of the Grand Ronde Community of Oregon.	Marion, OR, Multnomah, OR, Polk, OR,[14] Tillamook, OR, Washington, OR, Yamhill, OR.
Confederated Tribes of the Umatilla Indian Reservation	Umatilla, OR, Union, OR.
Confederated Tribes of the Warm Springs Reservation of Oregon.	Clackamas, OR, Jefferson, OR, Linn, OR, Marion, OR, Wasco, OR.
Coquille Indian Tribe	Coos, OR, Curry, OR, Douglas, OR, Jackson, OR, Lane, OR.
Coushatta Tribe of Louisiana	Allen Parish, LA, the city limits of Elton, LA.[15]
Cow Creek Band of Umpqua Tribe of Indians	Coos, OR,[16] Deshutes, OR, Douglas, OR, Jackson, OR, Josephine, OR, Klamath, OR, Lane, OR.
Cowlitz Indian Tribe	Clark, WA, Cowlitz, WA, King, WA, Lewis, WA, Peirce, WA, Skamania, WA, Thurston, WA, Columbia, OR,[17] Kittitas, WA, Wahkiakum, WA.
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota.	Brule, SD, Buffalo, SD, Hand, SD, Hughes, SD, Hyde, SD, Lyman, SD, Stanley, SD.
Crow Tribe of Montana	Big Horn, MT, Carbon, MT, Treasure, MT,[18] Yellowstone, MT, Big Horn, WY, Sheridan, WY.
Eastern Band of Cherokee Indians	Cherokee, NC, Graham, NC, Haywood, NC, Jackson, NC, Swain, NC.
Eastern Shoshone Tribe of the Wind River Reservation, Wyoming.	Hot Springs, WY, Fremont, WY, Sublette, WY.
Flandreau Santee Sioux Tribe of South Dakota	Moody, SD.
Forest County Potawatomi Community, Wisconsin	Forest, WI, Marinette, WI, Oconto, WI.
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana.	Blaine, MT, Phillips, MT.
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon.	The entire State of Nevada, Malheur, OR.
Fort McDowell Yavapai Nation, Arizona	Maricopa, AZ.
Fort Mojave Indian Tribe of Arizona, California and Nevada.	The entire State of Nevada, Mohave, AZ, San Bernardino, CA.
Gila River Indian Community of the Gila River Indian Reservation, Arizona.	Maricopa, AZ, Pinal, AZ.
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan.	Antrim, MI,[19] Benzie, MI, Charlevoix, MI, Grand Traverse, MI, Leelanau, MI, Manistee, MI.

PURCHASED/REFERRED CARE DELIVERY AREAS—Continued

Tribe/reservation	County/state
Hannahville Indian Community, Michigan	Delta, MI, Menominee, MI.
Haskell Indian Health Center	Douglas, KS.[20]
Havasupai Tribe of the Havasupai Reservation, Arizona	Coconino, AZ, Mohave, AZ.[21]
Ho-Chunk Nation of Wisconsin	Adams, WI,[22] Clark, WI, Columbia, WI, Crawford, WI, Dane, WI, Eau Claire, WI, Houston, MN, Jackson, WI, Juneau, WI, La Crosse, WI, Marathon, WI, Monroe, WI, Sauk, WI, Shawano, WI, Vernon, WI, Wood, WI.
Hoh Indian Tribe	Jefferson, WA.
Hopi Tribe of Arizona	Apache, AZ, Coconino, AZ, Navajo, AZ.
Houlton Band of Maliseet Indians	Aroostook, ME.[23]
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona.	Coconino, AZ, Mohave, AZ, Yavapai, AZ.
Iowa Tribe of Kansas and Nebraska	Brown, KS, Doniphan, KS, Richardson, NE.
Jamestown S'Klallam Tribe	Clallam, WA, Jefferson, WA.
Jena Band of Choctaw Indians	Grand Parish, LA,[24] LaSalle Parish, LA, Rapides, LA.
Jicarilla Apache Nation, New Mexico	Archuleta, CO, Rio Arriba, NM, Sandoval, NM.
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona.	Coconino, AZ, Mohave, AZ, Kane, UT.
Kalispel Indian Community of the Kalispel Reservation	Pend Oreille, WA, Spokane, WA.
Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo).	Sandoval, NM, Santa Fe, NM.
Keweenaw Bay Indian Community, Michigan	Baraga, MI, Houghton, MI, Ontonagon, MI.
Kickapoo Traditional Tribe of Texas	Maverick, TX.[25]
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas.	Brown, KS, Jackson, KS.
Klamath Tribes	Klamath, OR.[26]
Koi Nation of Northern California (formerly known as Lower Lake Rancheria, California).	Lake, CA, Sonoma, CA.[27]
Kootenai Tribe of Idaho	Boundary, ID.
Lac Courte Oreilles Band of Superior Chippewa Indians of Wisconsin.	Sawyer, WI.
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin.	Iron, WI, Oneida, WI, Vilas, WI.
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan.	Gogebic, MI.
Little River Band of Ottawa Indians, Michigan	Kent, MI,[28] Muskegon, MI, Newaygo, MI, Oceana, MI, Ottawa, MI, Manistee, MI, Mason, MI, Wexford, MI, Lake, MI.
Little Shell Tribe of Chippewa Indians of Montana	Blaine, MT, Cascade, MT, Glacier, MT, Hill, MT.[29]
Little Traverse Bay Bands of Odawa Indians, Michigan	Alcona, MI,[30] Alger, MI, Alpena, MI, Antrim, MI, Benzie, MI, Charlevoix, MI, Cheboygan, MI, Chippewa, MI, Crawford, MI, Delta, MI, Emmet, MI, Grand Traverse, MI, Iosco, MI, Kalkaska, MI, Leelanau, MI, Luce, MI, Mackinac, MI, Manistee, MI, Missaukee, MI, Montmorency, MI, Ogemaw, MI, Oscoda, MI, Otsego, MI, Presque Isle, MI, Schoolcraft, MI, Roscommon, MI, Wexford, MI.
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota.	Brule, SD, Buffalo, SD, Hughes, SD, Lyman, SD, Stanley, SD.
Lower Elwha Tribal Community	Clallam, WA.
Lower Sioux Indian Community in the State of Minnesota	Redwood, MN, Renville, MN.
Lummi Tribe of the Lummi Reservation	Whatcom, WA.
Makah Indian Tribe of the Makah Indian Reservation	Clallam, WA.
Mashantucket Pequot Indian Tribe	New London, CT.[31]
Mashpee Wampanoag Tribe	Barnstable, MA, Bristol, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA.[32]
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan.	Allegan, MI,[33] Barry, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Menominee Indian Tribe of Wisconsin	Langlade, WI, Menominee, WI, Oconto, WI, Shawano, WI.
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico.	Chaves, NM, Lincoln, NM, Otero, NM.
Miccosukee Tribe of Indians	Broward, FL, Collier, FL, Miami-Dade, FL, Hendry, FL.
Minnesota Chippewa Tribe, Minnesota, Bois Forte Band (Nett Lake).	Itasca, MN, Koochiching, MN, St. Louis, MN.
Minnesota Chippewa Tribe, Minnesota, Fond du Lac Band.	Carlton, MN, St. Louis, MN.
Minnesota Chippewa Tribe, Minnesota, Grand Portage Band.	Cook, MN.
Minnesota Chippewa Tribe, Minnesota, Leech Lake Band	Beltrami, MN, Cass, MN, Hubbard, MN, Itasca, MN.
Minnesota Chippewa Tribe, Minnesota, Mille Lacs Band	Aitkin, MN, Kanebec, MN, Mille Lacs, MN, Pine, MN.
Minnesota Chippewa Tribe, Minnesota, White Earth Band	Becker, MN, Clearwater, MN, Mahnomen, MN, Norman, MN, Polk, MN.
Mississippi Band of Choctaw Indians	Attala, MS, Jasper, MS,[34] Jones, MS, Kemper, MS, Leake, MS, Neshoba, MS, Newton, MS, Noxubee, MS,[35] Scott, MS,[36] Winston, MS.
Mohegan Tribe of Indians of Connecticut	Fairfield, CT, Hartford, CT, Litchfield, CT, Middlesex, CT, New Haven, CT, New London, CT, Tolland, CT, Windham, CT.

PURCHASED/REFERRED CARE DELIVERY AREAS—Continued

Tribe/reservation	County/state
Monacan Indian Nation	Amherst, VA, Nelson, VA, Albemarle, VA, Buckingham, VA, Appomattox, VA, Campbell, VA, Bedford, VA, Botetourt, VA, Rockbridge, VA, Augusta, VA, and the independent cities of Lynchburg, VA, Lexington, VA, Buena Vista, VA, Staunton, VA, Waynesboro, VA, and Charlottesville, VA.[37]
Muckleshoot Indian Tribe	King, WA, Pierce, WA.
Nansemond Indian Tribe	The independent cities of Chesapeake, VA, Hampton, VA, Newport News, VA, Norfolk, VA, Portsmouth, VA, Suffolk, VA, and Virginia Beach, VA.[38]
Narragansett Indian Tribe	Washington, RI.[39]
Navajo Nation, Arizona, New Mexico, & Utah	Apache, AZ, Bernalillo, NM, Cibola, NM, Coconino, AZ, Kane, UT, McKinley, NM, Montezuma, CO, Navajo, AZ, Rio Arriba, NM, Sandoval, NM, San Juan, NM, San Juan, UT, Socorro, NM, Valencia, NM.
Nevada	Entire State.[40]
Nez Perce Tribe	Clearwater, ID, Idaho, ID, Latah, ID, Lewis, ID, Nez Perce, ID.
Nisqually Indian Tribe	Pierce, WA, Thurston, WA.
Nooksack Indian Tribe	Whatcom, WA.
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.	Big Horn, MT, Carter, MT,[41] Rosebud, MT.
Northwestern Band of Shoshone Nation	Box Elder, UT.[42]
Nottawaseppi Huron Band of the Pottawatomi, Michigan	Allegan, MI,[43] Barry, MI, Branch, MI, Calhoun, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Oglala Sioux Tribe	Bennett, SD, Cherry, NE, Custer, SD, Dawes, NE, Fall River, SD, Jackson, SD,[44] Mellette, SD, Pennington, SD, Shannon, SD, Sheridan, NE, Todd, SD.
Ohkay Owingeh, New Mexico	Rio Arriba, NM.
Oklahoma	Entire State.[45]
Omaha Tribe of Nebraska	Burt, NE, Cuming, NE, Monona, IA, Thurston, NE, Wayne, NE.
Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin).	Brown, WI, Outagamie, WI.
Oneida Indian Nation (previously listed as the Oneida Nation of New York).	Chenango, NY, Cortland, NY, Herkimer, NY, Madison, NY, Oneida, NY, Onondaga, NY.
Onondaga Nation	Onondaga, NY.
Paiute Indian Tribe of Utah	Iron, UT,[46] Millard, UT, Sevier, UT, Washington, UT.
Pamunkey Indian Tribe	Caroline, VA, Hanover, VA, Henrico, VA, King William, VA, King and Queen, VA, New Kent, VA, and the independent city of Richmond, VA.[47]
Pascua Yaqui Tribe of Arizona	Pima, AZ.[48]
Passamaquoddy Tribe	Aroostook, ME,[49] [50] Hancock, ME,[51] Washington, ME.
Penobscot Nation	Aroostook, ME,[52] Penobscot, ME.
Poarch Band of Creeks	Baldwin, AL,[53] Elmore, AL, Escambia, AL, Mobile, AL, Monroe, AL, Escambia, FL.
Pokagon Band of Pottawatomi Indians, Michigan and Indiana.	Allegan, MI,[54] Berrien, MI, Cass, MI, Elkhart, IN, Kosciusko, IN, La Porte, IN, Marshall, IN, St. Joseph, IN, Starke, IN, Van Buren, MI.
Ponca Tribe of Nebraska	Boyd, NE,[55] Burt, NE, Charles Mix, SD, Douglas, NE, Hall, NE, Holt, NE, Knox, NE, Lancaster, NE, Madison, NE, Platte, NE, Pottawatomie, IA, Sarpy, NE, Stanton, NE, Wayne, NE, Woodbury, IA.
Port Gamble S'Klallam Tribe	Kitsap, WA.
Prairie Band of Pottawatomi Nation	Jackson, KS.
Prairie Island Indian Community in the State of Minnesota.	Goodhue, MN.
Pueblo of Acoma, New Mexico	Cibola, NM.
Pueblo of Cochiti, New Mexico	Sandoval, NM, Santa Fe, NM.
Pueblo of Isleta, New Mexico	Bernalillo, NM, Torrance, NM, Valencia, NM.
Pueblo of Jemez, New Mexico	Sandoval, NM.
Pueblo of Laguna, New Mexico	Bernalillo, NM, Cibola, NM, Sandoval, NM, Valencia, NM.
Pueblo of Nambe, New Mexico	Santa Fe, NM.
Pueblo of Picuris, New Mexico	Taos, NM.
Pueblo of Pojoaque, New Mexico	Rio Arriba, NM, Santa Fe, NM.
Pueblo of San Felipe, New Mexico	Sandoval, NM.
Pueblo of San Ildefonso, New Mexico	Los Alamos, NM, Rio Arriba, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of Sandia, New Mexico	Bernalillo, NM, Sandoval, NM.
Pueblo of Santa Ana, New Mexico	Sandoval, NM.
Pueblo of Santa Clara, New Mexico	Los Alamos, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of Taos, New Mexico	Colfax, NM, Taos, NM.
Pueblo of Tesuque, Mexico	Santa Fe, NM.
Pueblo of Zia, New Mexico	Sandoval, NM.
Puyallup Tribe of the Puyallup Reservation	King, WA, Pierce, WA, Thurston, WA.
Quechan Tribe of the Fort Yuma Indian Reservation, Arizona and California.	Yuma, AZ, Imperial, CA.
Quileute Tribe of the Quileute Reservation	Clallam, WA, Jefferson, WA.
Quinault Indian Nation	Grays Harbor, WA, Jefferson, WA.
Rapid City, South Dakota	Pennington, SD.[56]
Rappahannock Tribe, Inc.	King and Queen County, VA, Caroline County, VA, Essex County, VA, King William County, VA.[57]
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin.	Bayfield, WI.

PURCHASED/REFERRED CARE DELIVERY AREAS—Continued

Tribe/reservation	County/state
Red Lake Band of Chippewa Indians, Minnesota	Beltrami, MN, Clearwater, MN, Koochiching, MN, Lake of the Woods, MN, Marshall, MN, Pennington, MN, Polk, MN, Roseau, MN.
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota.	Bennett, SD, Cherry, NE, Gregory, SD, Lyman, SD, Mellette, SD, Todd, SD, Tripp, SD.
Sac & Fox Nation of Missouri in Kansas and Nebraska	Brown, KS, Richardson, NE.
Sac & Fox Tribe of the Mississippi in Iowa	Tama, IA.
Saginaw Chippewa Indian Tribe of Michigan	Arenac, MI,[58] Clare, MI, Isabella, MI, Midland, MI, Missaukee, MI.
Saint Regis Mohawk Tribe	Franklin, NY, St. Lawrence, NY.
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona.	Maricopa, AZ.
Samish Indian Nation	Clallam, WA,[59] Island, WA, Jefferson, WA, King, WA, Kitsap, WA, Pierce, WA, San Juan, WA, Skagit, WA, Snohomish, WA, Whatcom, WA.
San Carlos Apache Tribe of the San Carlos Reservation, Arizona.	Apache, AZ, Cochise, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Pinal, AZ.
San Juan Southern Paiute Tribe of Arizona	Coconino, AZ, San Juan, UT.
Santee Sioux Nation, Nebraska	Bon Homme, SD, Knox, NE.
Sauk-Suiattle Indian Tribe	Snohomish, WA, Skagit, WA.
Sault Ste. Marie Tribe of Chippewa Indians, Michigan	Alger, MI,[60] Chippewa, MI, Delta, MI, Luce, MI, Mackinac, MI, Marquette, MI, Schoolcraft, MI.
Seminole Tribe of Florida	Broward, FL, Collier, FL, Miami-Dade, FL, Glades, FL, Hendry, FL.
Seneca Nation of Indians	Alleghany, NY, Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA.
Shakopee Mdewakanton Sioux Community of Minnesota	Scott, MN.
Shinnecock Indian Nation	Nassau, NY,[61] Suffolk, NY.
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation.	Pacific, WA.
Shoshone-Bannock Tribes of the Fort Hall Reservation	Bannock, ID, Bingham, ID, Caribou, ID, Lemhi, ID,[62] Power, ID.
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada.	The entire state of Nevada, Owyhee, ID.
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota.	Codington, SD, Day, SD, Grant, SD, Marshall, SD, Richland, ND, Roberts, SD, Sargent, ND, Traverse, MN.
Skokomish Indian Tribe	Mason, WA.
Skull Valley Band of Goshute Indians of Utah	Tooele, UT.
Snoqualmie Indian Tribe	King, WA,[63] Snohomish, WA, Pierce, WA, Island, WA, Mason, WA.
Sokaogon Chippewa Community, Wisconsin	Forest, WI.
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado.	Archuleta, CO, La Plata, CO, Montezuma, CO, Rio Arriba, NM, San Juan, NM.
Spirit Lake Tribe, North Dakota	Benson, ND, Eddy, ND, Nelson, ND, Ramsey, ND.
Spokane Tribe of the Spokane Reservation	Ferry, WA, Lincoln, WA, Stevens, WA.
Squaxin Island Tribe of the Squaxin Island Reservation	Mason, WA.
St. Croix Chippewa Indians of Wisconsin	Barron, WI, Burnett, WI, Pine, MN, Polk, WI, Washburn, WI.
Standing Rock Sioux Tribe of North & South Dakota	Adams, ND, Campbell, SD, Corson, SD, Dewey, SD, Emmons, ND, Grant, ND, Morton, ND, Perkins, SD, Sioux, ND, Walworth, SD, Ziebach, SD.
Stillaguamish Tribe of Indians of Washington	Snohomish, WA.
Stockbridge Munsee Community, Wisconsin	Menominee, WI, Shawano, WI.
Suquamish Indian Tribe of the Port Madison Reservation	Kitsap, WA.
Swinomish Indian Tribal Community	Skagit, WA.
Tejon Indian Tribe	The State of California including Kern, CA.[64]
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.	Dunn, ND, Mercer, ND, McKenzie, ND, McLean, ND, Mountrail, ND, Ward, ND.
Tohono O'odham Nation of Arizona	Maricopa, AZ, Pima, AZ, Pinal, AZ.
Tolowa Dee-ni' Nation (formerly known as Smith River Rancheria of California).	California, Curry, OR.[65]
Tonawanda Band of Seneca	Genesee, NY, Erie, NY, Niagara, NY.
Tonto Apache Tribe of Arizona	Gila, AZ.
Trenton Service Unit, North Dakota and Montana	Divide, ND,[66] McKenzie, ND, Williams, ND, Richland, MT, Roosevelt, MT, Sheridan, MT.
Tulalip Tribes of Washington	Snohomish, WA.
Tunica-Biloxi Indian Tribe	Avoyelles, LA, Rapides, LA.[67]
Turtle Mountain Band of Chippewa Indians of North Dakota.	Rolette, ND.
Tuscarora Nation	Niagara, NY.
Upper Mattaponi Tribe	Caroline, VA, Charles City, VA, Essex, VA, Hanover, VA, Henrico, VA, James City, VA, King and Queen, VA, King William, VA, Middlesex, VA, New Kent, VA, Richmond, VA and the independent city of Richmond, VA.[68]
Upper Sioux Community, Minnesota	Chippewa, MN, Yellow Medicine, MN.
Upper Skagit Indian Tribe	Skagit, WA.
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah	Carbon, UT, Daggett, UT, Duchesne, UT, Emery, UT, Grand, UT, Rio Blanco, CO, Summit, UT, Uintah, UT, Utah, UT, Wasatch, UT.
Ute Mountain Ute Tribe	Apache, AZ, La Plata, CO, Montezuma, CO, San Juan, NM, San Juan, UT.
Wampanoag Tribe of Gay Head (Aquinnah)	Dukes, MA,[69] Barnstable, MA, Bristol, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA.[70]

PURCHASED/REFERRED CARE DELIVERY AREAS—Continued

Tribe/reservation	County/state
Washoe Tribe of Nevada & California	The State of Nevada, The State of California except for the counties listed in footnote.
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona.	Apache, AZ, Coconino, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Navajo, AZ.
Wilton Rancheria, California	The State of California including Sacramento, CA.[71]
Winnebago Tribe of Nebraska	Dakota, NE, Dixon, NE, Monona, IA, Thurston, NE, Wayne, NE, Woodbury, IA.
Yankton Sioux Tribe of South Dakota	Bon Homme, SD, Boyd, NE, Charles Mix, SD, Douglas, SD, Gregory, SD, Hutchinson, SD, Knox, NE.
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.	Yavapai, AZ.
Yavapai-Prescott Indian Tribe	Yavapai, AZ.
Ysleta Del Sur Pueblo of Texas	El Paso, TX.[72]
Zuni Tribe of the Zuni Reservation, New Mexico	Apache, AZ, Cibola, NM, McKinley, NM, Valencia, NM.

[1] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for ''members of the Tribe'' by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

[2] Entire State of Alaska is included as a CHSDA by regulation (42 CFR 136.22(a)(1)).

[3] Aroostook Band of Micmacs was recognized by Congress on November 26, 1991, through the Aroostook Band of Micmac Settlement Act. Aroostook County, ME, was defined as the SDA.

[4] Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility rather than the eligibility regulations. Historically services have been provided at Brigham City Intermountain School Health Center, Utah (Pub. L. 88–358).

[5] Entire State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura, is designated a CHSDA (25 U.S.C. 1680).

[6] The counties were recognized after the January 1984 CHSDA FRN was published, in accordance with Public Law 103–116, Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, dated October 27, 1993.

[7] There is no reservation for the Cayuga Nation; the service delivery area consists of those counties identified by the Cayuga Nation.

[8] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Chickahominy Indian Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[9] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Chickahominy Indian Tribe—Eastern Division as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[10] Skamania County, WA, has historically been a part of the Yakama Service Unit population since 1979.

[11] In order to carry out the Congressional intent of the Siletz Restoration Act, Public Law 95–195, as expressed in H. Report No. 95–623, at page 4, members of the Confederated Tribes of Siletz Indians of Oregon residing in these counties are eligible for contract health services.

[12] Chelan County, WA, has historically been a part of the Colville Service Unit population since 1970.

[13] Pursuant to Public Law 98–481 (H. Rept. No. 98–904), Coos, Lower Umpqua and Siuslaw Restoration Act, members of the Tribe residing in these counties were specified as eligible for Federal services and benefits without regard to the existence of a Federal Indian reservation.

[14] The Confederated Tribes of Grand Ronde Community of Oregon were recognized by Public Law 98–165 which was signed into law on November 22, 1983, and provides for eligibility in these six counties without regard to the existence of a reservation.

[15] The CHSDA for the Coushatta Tribe of Louisiana was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include city limits of Elton, LA.

[16] Cow Creek Band of Umpqua Tribe of Indians recognized by Public Law 97–391, signed into law on December 29, 1983. House Rept. No. 97–862 designates Douglas, Jackson, and Josephine Counties as a service area without regard to the existence of a reservation. The IHS later administratively expanded the CHSDA to include the counties of Coos, OR, Deschutes, OR, Klamath, OR, and Lane, OR.

[17] The Cowlitz Indian Tribe was recognized in July 2002 as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638. The CHSDA was administratively expanded to included Columbia County, OR, Kittitas, WA, and Wahkiakum County, WA, as published at 67884 FR December 21, 2009.

[18] Treasure County, MT, has historically been a part of the Crow Service Unit population.

[19] The counties listed have historically been a part of the Grand Traverse Service Unit population since 1980.

[20] Haskell Indian Health Center has historically been a part of Kansas Service Unit since 1979. Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility rather than the eligibility regulations. Historically services have been provided at Haskell Indian Health Center (H. Rept. No. 95–392).

[21] The PRCDA for the Havasupai Tribe of Arizona was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include Mohave County in the State of Arizona.

[22] CHSDA counties for the Ho-Chunk Nation of Wisconsin were designated by regulation (42 CFR 136.22(a)(5)). Dane County, WI, was added to the reservation by the Bureau of Indian Affairs in 1986.

[23] Public Law 97–428 provides that any member of the Houlton Band of Maliseet Indians in or around the Town of Houlton shall be eligible without regard to existence of a reservation.

[24] The Jena Band of Choctaw Indian was Federally acknowledged as documented at 60 FR 28480, May 31, 1995. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[25] Kickapoo Traditional Tribe of Texas, formerly known as the Texas Band of Kickapoo, was recognized by Public Law 97–429, signed into law on January 8, 1983. The Act provides for eligibility for Kickapoo Tribal members residing in Maverick County without regard to the existence of a reservation.

[26] The Klamath Indian Tribe Restoration Act (Pub. L. 99–398, Sec. 2(2)) states that for the purpose of Federal services and benefits ''members of the tribe residing in Klamath County shall be deemed to be residing in or near a reservation''.

[27] The Koi Nation of Northern California, formerly known as the Lower Lake Rancheria, was reaffirmed by the Secretary of the Bureau of Indian Affairs on December 29, 2000. The counties listed were designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[28] The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act recognized the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Pursuant to Public Law 103–324, Sec.4 (b) the counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[29] In Public Law 116–92, that became law on December 20, 2019, Congress federally recognized the Little Shell Tribe of Chippewa Indians of Montana. Consistent with Public Law 116–92, the IHS designated the counties as the PRCDA for the Little Shell Tribe of Chippewa Indians of Montana.

[30] The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act recognized the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Pursuant to Public Law 103–324, Sec.4 (b) the counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[31] Mashantucket Pequot Indian Claims Settlement Act, Public Law 98–134, signed into law on October 18, 1983, provides a reservation for the Mashantucket Pequot Indian Tribe in New London County, CT.

[32] The Mashpee Wampanoag Tribe was recognized in February 2007, as documented at 72 FR 8007, February 22, 2007. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[33] The Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan was recognized in October 1998, as documented at 63 FR 56936, October 23, 1998. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[34] Members of the Mississippi Band of Choctaw Indians residing in Jasper and Noxubee Counties, MS, are eligible for contract health services; these two counties were inadvertently omitted from 42 CFR 136.22.

[35] Members of the Mississippi Band of Choctaw Indians residing in Jasper and Noxubee Counties, MS, are eligible for contract health services; these two counties were inadvertently omitted from 42 CFR 136.22.

[36] Scott County, MS, has historically been a part of the Choctaw Service Unit population since 1970.

[37] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Monacan Indian Nation as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[38] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Nansemond Indian Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[39] The Narragansett Indian Tribe was recognized by Public Law 95–395, signed into law September 30, 1978. Lands in Washington County, RI, are now Federally restricted and the Bureau of Indian Affairs considers them as the Narragansett Indian Reservation.

[40] Entire State of Nevada is included as a CHSDA by regulation (42 CFR 136.22 (a)(2)).

[41] Carter County, MT, has historically been a part of the Northern Cheyenne Service Unit population since 1979.

[42] Land of Box Elder County, Utah, was taken into trust for the Northwestern Band of Shoshone Nation in 1986.

[43] The Nottawaseppi Huron Band of the Potawatomi, Michigan, formerly known as the Huron Band of Potawatomi, Inc., was recognized in December 1995, as documented at 60 FR 66315, December 21, 1995. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[44] Washabaugh County, SD, merged and became part of Jackson County, SD, in 1983; both were/are CHSDA counties for the Oglala Sioux Tribe.

[45] Entire State of Oklahoma is included as a CHSDA by regulation (42 CFR 136.22 (a)(3)).

[46] Paiute Indian Tribe of Utah Restoration Act, Public Law 96–227, provides for the extension of services for the Paiute Indian Tribe of Utah to these four counties without regard to the existence of a reservation.

[47] In the **Federal Register** on July 8, 2015 (80 FR 39144), the Pamunkey Indian Tribe was officially recognized as an Indian Tribe within the meaning of Federal law. The counties listed were designated administratively as the PRCDA, for the purposes of operating a PRC program.

[48] Legislative history (H.R. Report No. 95–1021) to Public Law 95–375, Extension of Federal Benefits to Pascua Yaqui Indians, Arizona, expresses congressional intent that lands conveyed to the Pascua Yaqui Tribe of Arizona pursuant to Act of October 8, 1964. (Pub. L. 88–350) shall be deemed a Federal Indian Reservation.

[49] The Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420; H. Rept. 96–1353) includes the intent of Congress to fund and provide contract health services to the Passamaquoddy Tribe and the Penobscot Nation.

[50] The Passamaquoddy Tribe has two reservations: Indian Township and Pleasant Point. The PRCDA for the Passamaquoddy Tribe at Indian Township, ME, is Aroostook County, ME, Washington County, ME, and Hancock County, ME. The PRCDA for the Passamaquoddy Tribe at Pleasant Point, ME, is Washington County, ME, south of State Route 9, and Aroostook County, ME.

[51] The Passamaquoddy Tribe's counties listed are designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[52] The Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420; H. Rept. 96–1353) includes the intent of Congress to fund and provide PRC to the Passamaquoddy Tribe and the Penobscot Nation.

[53] Counties in the Service Unit designated by Congress for the Poarch Band of Creek Indians (see H. Rept. 98–886, June 29, 1984; Cong. Record, October 10, 1984, Pg. H11929).

[54] Public Law 103–323 restored Federal recognition to the Pokagon Band of Potawatomi Indians, Michigan and Indiana, in 1994 and identified counties to serve as the SDA.

[55] The Ponca Restoration Act, Public Law 101–484, recognized members of the Ponca Tribe of Nebraska in Boyd, Douglas, Knox, Madison or Lancaster counties of Nebraska or Charles Mix county of South Dakota as residing on or near a reservation. Public Law 104–109 made technical corrections to laws relating to Native Americans and added Burt, Hall, Holt, Platte, Sarpy, Stanton, and Wayne counties of Nebraska and Pottawatomie and Woodbury counties of Iowa to the Ponca Tribe of Nebraska SDA.

[56] Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations. Historically services have been provided at Rapid City (S. Rept. No. 1154, FY 1967 Interior Approp. 89th Cong. 2d Sess.).

[57] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Rappahannock Tribe, Inc. as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[58] Historically part of Isabella Reservation Area for the Saginaw Chippewa Indian Tribe of Michigan and the Eastern Michigan Service Unit population since 1979.

[59] The Samish Indian Tribe Nation was Federally acknowledged in April 1996 as documented at 61 FR 15825, April 9, 1996. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[60] CHSDA counties for the Sault Ste. Marie Tribe of Chippewa Indians, Michigan, were designated by regulation (42 CFR 136.22(a)(4)).

[61] The Shinnecock Indian Nation was Federally acknowledged in June 2010 as documented at 75 FR 34760, June 18, 2010. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[62] Lemhi County, ID, has historically been a part of the Fort Hall Service Unit population since 1979.

[63] The Snoqualmie Indian Tribe was Federally acknowledged in August 1997 as documented at 62 FR 45864, August 29, 1997. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[64] On December 30, 2011 the Office of Assistant Secretary-Indian Affairs reaffirmed the Federal recognition of the Tejon Indian Tribe. Kern County, CA, was designated administratively as part of the Tribe's CHSDA in addition to the CHSDA established by Congress for the State of California. Kern County was not covered when Congress originally established the State of California as a CHSDA excluding certain counties including Sacramento County (25 U.S.C. 1680).

[65] The counties listed are designated administratively as the SDA, to function as a PRC SDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[66] The Secretary acting through the Service is directed to provide contract health services to Turtle Mountain Band of Chippewa Indians that reside in Trenton Service Unit, North Dakota and Montana, in Divide, Mackenzie, and Williams counties in the state of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the state of Montana (Sec. 815, Pub. L. 94–437).

[67] Rapides County, LA, has historically been a part of the Tunica Biloxi Service Unit population since 1982.

[68] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Upper Mattaponi Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[69] According to Public Law 100–95, Sec. 12, members of the Wampanoag Tribe of Gay Head (Aquinnah) residing on Martha's Vineyard are deemed to be living on or near an Indian reservation for the purposes of eligibility for Federal services.

[70] The counties listed are designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[71] The Wilton Rancheria, California had Federal recognition restored in July 2009 as documented at 74 FR 33468, July 13, 2009. Sacramento County, CA, was designated administratively as part of the Rancheria's CHSDA in addition to the CHSDA established by Congress for the State of California. Sacramento County was not covered when Congress originally established the State of California as a CHSDA excluding certain counties including Sacramento County (25 U.S.C. 1680).

[72] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for ''members of the Tribe'' by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

Michael D. Weahkee,

RADM Assistant Surgeon General, U.S. Public Health Service, Director, Indian Health Service.

[FR Doc. 2020–11010 Filed 5–20–20; 8:45 am]

BILLING CODE 4160–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 Eye Council.

The meeting will be open to the public as indicated below, The June 12, 2020 National Advisory Eye Council Meeting will be held via a ZOOM Webinar. Instructions for accessing the meeting can be found at *https://www.nei.nih.gov/about/advisory-committees/national-advisory-eye-council-naec/national-advisory-eye-council-naec-meeting-agenda.*

Attendees and interested parties can submit questions and comments through written Q&A during the meeting, and for 15 days after the meeting, to *nei-naec@mail.nih.gov.* Individuals who plan to attend and 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 Zoom Webinar will have sign language interpretation and closed captions.

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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council,

Date: June 12, 2020.

Open: 10:00 a.m. to 12:30 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892, (Zoom Meeting).

Closed: 1:30 p.m. to 3:10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892, (Zoom Meeting).

Contact Person: Anne E. Schaffner, Ph.D., Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3400, Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov.*

Any interested person may file written comments with the committee by forwarding the 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: *www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 15, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–10955 Filed 5–20–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec LLC (St. James, LA) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of AmSpec LLC (St. James, LA), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (St. James, LA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of December 18, 2019.

DATES: AmSpec LLC (St. James, LA) was approved and accredited as a commercial gauger and laboratory as of December 18, 2019. The next triennial inspection date will be scheduled for December 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec LLC, 5525 Highway 18, St. James, LA 70086, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

AmSpec LLC (St. James, LA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Definitions.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

AmSpec LLC is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–03	ASTM D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–06	ASTM D 473	Standard test method for sediment in crude oils and fuel oils by the extraction method.
27–13	ASTM D 4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–46	ASTM D 5002	Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer.
N/A	ASTM D 4007	Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 30, 2020.

Larry D. Fluty,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2020–10947 Filed 5–20–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of AmSpec LLC (Rensselaer, NY), as a Commercial Gauger

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

ACTION: Notice of approval of AmSpec LLC (Rensselaer, NY), as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (Rensselaer, NY), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of August 23, 2019.

DATES: AmSpec LLC (Rensselaer, NY) was approved as a commercial gauger as of August 23, 2019. The next triennial inspection date will be scheduled for August 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that AmSpec LLC, 337 Columbia St., Rensselaer, NY 12144 has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. AmSpec LLC (Rensselaer, NY) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 30, 2020.

Larry D. Fluty,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2020–10949 Filed 5–20–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of AmSpec LLC (Glen Burnie, MD) as a Commercial Gauger

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

ACTION: Notice of approval of AmSpec LLC (Glen Burnie, MD), as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (Glen Burnie, MD), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of October 9, 2019.

DATES: AmSpec LLC (Glen Burnie, MD) was approved as a commercial gauger as of October 9, 2019. The next triennial inspection date will be scheduled for October 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and

Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that AmSpec LLC, 6750 McLean Way, Suite A, Glen Burnie, MD 21060, has been approved to gauge petroleum and certain petroleum products in accordance with the provisions of 19 CFR 151.13.

AmSpec LLC (Glen Burnie, MD) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Definitions.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 30, 2020.

Larry D. Fluty,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2020–10948 Filed 5–20–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of AmSpec LLC (Avenel, NJ) as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of AmSpec LLC (Avenel, NJ), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (Avenel, NJ), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of October 16, 2019.

DATES: AmSpec LLC (Avenel, NJ) was approved and accredited as a commercial gauger and laboratory as of October 16, 2019. The next triennial inspection date will be scheduled for October 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Bondoc, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec LLC, 36 Milweed Way, Avenel, NJ 07001, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

AmSpec LLC (Avenel, NJ) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
1	Vocabulary.
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Properties Data.
12	Calculations.
17	Marine Measurement.

AmSpec LLC (Avenel, NJ) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	D 287	Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method).
27–02	D 1298	Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.
27–03	D 4006	Standard Test Method for Water in Crude Oil by Distillation.
27–04	D 95	Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation.
27–05	D 4928	Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration.
27–06	D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–08	D 86	Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure.
27–13	D 4294	Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry.
27–14	D 2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry.
27–48	D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–50	D 93	Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester.
27–53	D 2709	Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge.
27–54	D 1796	Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method.
27–58	D 5191	Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please

reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.

Dated: April 30, 2020.

Larry D. Fluty,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2020–10946 Filed 5–20–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0049]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Suspicious/Criminal Activity Tip Reporting

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance. This information collection was previously published in the **Federal Register** on December 13, 2019, allowing for a 60-day comment period. ICE received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until June 22, 2020.

ADDRESSES: Written comments and recommendations should be sent within 30 days of publication of this notice via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number ICEB–2019–0010; *The comments submitted via this method are visible to the Office of Management and Budget, and comply with the requirements of 5 CFR 1320.12(c).*

FOR FURTHER INFORMATION CONTACT: For specific question related to collection activities, please contact Jody C. Fasenmyer (802–662–8115), *jody.c.fasenmyer@ice.dhs.gov,* U.S. Immigration and Customs Enforcement.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Suspicious/Criminal Activity Tip Reporting.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households. The Department of Homeland Security (DHS) tip reporting capability will facilitate the collection of information from the public and law enforcement partners regarding allegations of crimes enforced by DHS.

(5) *An estimate of the total number of responses and the amount of time estimated for an average respondent to respond:* ICE estimates a total of 139,381 responses at .10 minutes (.167 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 23,230 annual burden hours.

Dated: May 18, 2020.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2020–10950 Filed 5–20–20; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–19147]

Exemption From Regulatory Requirements Limiting the Initiation of Flight Training to 180 Days or Less for Aliens Who Have an Approved Security Threat Assessment

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of temporary exemption.

SUMMARY: The Transportation Security Administration (TSA) is granting a temporary exemption from certain requirements in 49 CFR part 1552 regarding the timeframe within which a flight school must initiate flight training for alien flight students (candidates) who have an approved TSA security threat assessment (STA). For the duration of this exemption, TSA grants an extension from 180 days to 365 calendar days for candidates to begin training if the candidate's information and fees for an STA were submitted on or between December 1, 2019 and September 1, 2020.

DATES: This exemption becomes effective on May 17, 2020 and remains in effect through September 1, 2020, unless otherwise modified by TSA through a notice published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephanie Hamilton, 571–227–2851 or via email at *AFSP.Help@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Vision 100—Century of Aviation Reauthorization Act of 2003 requires flight training providers to notify TSA when aliens and other individuals designated by the Secretary of Homeland Security, request flight training and ensure that these individuals obtain a favorable STA conducted by TSA before initiating training.[1] As required by TSA's implementing regulations in 49 CFR part 1552, the STA for candidates[2] in the Alien Flight Student Program (AFSP) consists of criminal,

[1] *See* Aviation and Transportation Security Act (ATSA), Public Law 107–71, Sec. 113, Flight School Security (115 Stat. 597, 622; Nov. 19, 2001), *as amended by* Vision 100—Century of Aviation Reauthorization Act, Public Law 108–176, Title VI, Aviation Security, sec. 612 (117 Stat. 2489, 2572; Dec. 12, 2003), codified at 49 U.S.C. 44939.

[2] A candidate is defined as ''an alien or other individual designated by TSA who applies for flight training or recurrent training. It does not include an individual endorsed by the Department of Defense for flight training.'' *See* 49 CFR 1552.2.

immigration, and terrorism checks.[3] To ensure the STA is valid at the time a candidate takes training, TSA's regulations generally prohibit a flight training provider from initiating training of a candidate beyond 180 days after the candidate received an approval to train from TSA. *See* 49 CFR 1552.3(a)–(d).

On March 11, 2020, the World Health Organization characterized the Coronavirus Disease 2019 (COVID–19) outbreak as a global pandemic. On March 13, 2020, the President declared a National Emergency.[4] Health experts within Federal, State, and local governments have strongly recommended that individuals practice social distancing when engaging with others whenever possible, to minimize the spread of SARS–CoV–2, the virus that causes COVID–19.

In response to these actions, a majority of U.S. States and foreign governments have imposed significant restrictions on commercial activities and individual movement, except when performing essential functions. The lifting of these restrictions is occurring at a state or local level and can vary in terms of the scope and pace of reopening various sectors of the economy.

Fifty-eight percent of AFSP training is provided to individuals who either have or are attempting to obtain airmen certifications for large aircraft used for the purpose of transporting cargo and/or passengers. The Flight School Association of North America estimates one-third of all flight training in the United States is conducted for aliens, many of whom are lawful permanent residents, or students participating in the student visitor exchange program. Many candidates who are already in the United States have discovered that fingerprint collection locations and domestic U.S. Citizenship and Immigration Services offices are closed. There can be additional delays for candidates outside the United States who may have difficulty obtaining U.S. visas in locations where U.S. consulates are closed or are in locations subject to travel restrictions.

In sum, under the present regulatory requirement, it may be impracticable for most candidates to begin training within 180 days if any of the following apply due to the COVID–19 public health emergency:

- Candidates cannot obtain a U.S. visa because U.S. consulates are closed;
- Candidates cannot get fingerprinted because the fingerprint collector is closed;
- A U.S. State, local, territorial, or tribal government, or a political subdivision of any of the foregoing has told a flight training provider to temporarily close its doors; or
- The flight training provider is implementing self-precautions and temporarily suspending training in order to prevent the spread of SARS–CoV–2, the virus that causes COVID–19.

TSA's regulations also require a fee for each STA conducted by TSA. *See* 49 CFR 1552.5. If providers and candidates miss the window for initiating training, they will be required to remit another fee for the new STA.

During the COVID–19 crisis, it is vital to move cargo expeditiously through the supply chain, and to ensure that medical supplies and home goods reach healthcare centers and consumers. Aviation facilities and aircraft are an integral part of the supply chain and must continue operations throughout the public health emergency and after. Workers who support air transportation of cargo and passengers, including flight instructors, are considered by the DHS Cybersecurity and Infrastructure Security Agency (CISA) as essential.[5]

Authority and Determination

TSA may grant an exemption from a regulation if TSA determines that the exemption is in the public interest.[6] TSA has determined that it is in the public interest to grant an exemption from certain process requirements in 49 CFR part 1552 related to initiating flight training during the current National Emergency created by the COVID–19 crisis. This exemption will facilitate the timely resumption of U.S.-based aviation training for aliens to allow pilots to continue to provide vital services during the COVID–19 public health emergency, while TSA ensures effective transportation security vetting.

Without this exemption, TSA estimates more than 2,100 U.S. businesses may lose significant revenue before restrictions are limited, U.S.-entry restrictions are eased, and flight training businesses re-open at the end of the current crisis.[7] This exemption also provides needed flexibility to the 4,500 candidates who have applied for training and meet the requirements of this exemption.[8] Air transportation employees are essential workers necessary during the COVID–19 public health crisis to support the United States' transportation and logistics infrastructure.[9] The flexibility provided by this exemption will ensure these individuals receive the training necessary to provide this support. TSA has determined that there is little to no risk to transportation security associated with this exemption for the following reasons:

1. The exemption applies only to individuals who have already successfully completed a comprehensive STA;

2. The exemption applies to a specific group of individuals for a limited period of time subject to possible modification by TSA before the end of the effective period to ensure consistency with the duration and scope of the COVID–19 crisis;

3. TSA will continue to recurrently vet the subject group of individuals against Federal terrorism and national security-related watch lists and databases; and

4. TSA retains its full authority to immediately revoke or suspend an AFSP STA if TSA determines that the holder is no longer eligible, in accordance with 49 CFR part 1552.

Exemption

1. *Eligibility.* This exemption applies to candidates in the AFSP who submitted the information and fees required for an STA on or between December 1, 2019, and September 1, 2020, and with respect to whom TSA subsequently informed the flight school that the candidate does not pose a threat to aviation or national security.

2. *Flight Training Provider Exemption.* For the duration of this exemption, a flight school may begin an eligible candidate's flight training within 365 calendar days of being informed by TSA that the candidate does not pose a threat to aviation or national security, or within 365 calendar days after more than 30 days have elapsed since TSA received all of the information and fees required by 49 CFR 1552.3. The flight training provider

[3] 49 CFR part 1552.

[4] *See* Proclamation 9994, *Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak* (Mar. 13, 2020). Published at 85 FR 15337 (Mar. 18, 2020).

[5] CISA, April 17, 2020: Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID–19 Response.

[6] *See* 49 U.S.C. 114(q). The Administrator of TSA delegated this authority to the Executive Assistant Administrator for Operations Security, effective March 26, 2020, during the period of the National Emergency cited *supra,* n.4.

[7] TSA uses internal AFSP program data on flight training providers and subject matter expertise to estimate the proportion of businesses that would benefit from this exemption.

[8] TSA uses ASFP candidate data to estimate the affected population.

[9] *See* Cybersecurity and Infrastructure Security Agency (CISA) Memorandum on Identification of Essential Critical Infrastructure Workers During COVID–19 Response (March 19, 2020), available at: *https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf.*

must continue to notify TSA when each candidate initiates a flight training event in accordance with 49 CFR part 1552.3.

3. *Continuation of Vetting.* For the duration of the exemption, TSA will continue to recurrently vet the subject group of individuals against Federal terrorism and national security-related watch lists and databases. TSA retains its full authority to immediately revoke or suspend an AFSP STA if TSA determines that the holder is no longer eligible, in accordance with 49 CFR part 1552.

Limits of Exemption: This extension does not apply to Category 1 training until the conditions specified in 49 CFR 1552.3(a)(4) are met. This extension does not apply to Category 2 training until the conditions specified in 49 CFR 1552.3(b)(1)(iv) are met. This extension does not apply to any training category if a candidate's information and fee for an STA were submitted before December 1, 2019 or after September 1, 2020.

Stacey Fitzmaurice,

Executive Assistant Administrator for Operations Support.

[FR Doc. 2020–10960 Filed 5–20–20; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Revision of Agency Information Collection Activity Under OMB Review: TSA PreCheck™ Application Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0059, abstracted below to OMB for review and approval of a revision of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on November 4, 2019, 84 FR 59401. The collection involves the submission of biographic and biometric information by individuals seeking to enroll in the TSA PreCheck™ (also known as TSA Pre✓®) Application Program, as well as optional surveys sponsored by TSA to current and former applicants related to customer service, enrollment processes, and TSA PreCheck marketing.

DATES: Send your comments by June 22, 2020. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be identified by Docket ID: TSA–2013–0001 and sent to the Federal eRulemaking Portal, *http://www.regulations.gov*. Please follow the portal instructions for submitting comments. This process is conducted in accordance with 5 CFR 1320.1.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to:

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

Title: TSA PreCheck™ Application Program.

Type of Request: Revision of currently approved collection.

OMB Control Number: 1652–0059.

Form(s): NA.

Affected Public: Air Travelers.

Abstract: The Transportation Security Administration (TSA) implemented the TSA PreCheck Application Program pursuant to its authority under sec. 109(a)(3) of the Aviation and Transportation Security Act (ATSA), Public Law 107–71 (115 Stat. 597, 613, Nov. 19, 2001, codified at 49 U.S.C. 114 note), which authorizes TSA to establish registered traveler programs, as well as section 540 of the DHS Appropriations Act, 2006, Public Law 109–90 (119 Stat. 2064, 2088–89, Oct. 18, 2005), which requires TSA to collect a fee for any registered traveler program by publication of a notice in the **Federal Register**.

The TSA PreCheck Application Program enhances aviation security by permitting TSA to more effectively focus its limited security resources on passengers for whom TSA has little information, while also facilitating and improving the commercial aviation travel experience for the public. Travelers who choose not to enroll in this initiative are not subject to any limitations on their travel because of their choice; they will be processed through TSA screening before entering the sterile areas of airports. TSA also retains the authority to perform standard or other screening on a random basis on TSA PreCheck Application Program participants and any other travelers authorized to receive expedited physical screening.

Under the TSA PreCheck Application Program, individuals submit biographic (including, but not limited to, name, date of birth, gender, prior and current addresses, contact information, country of birth, images of identity documents, proof of citizenship/immigration status) and biometric (such as fingerprints, iris scans, and/or facial images) information to TSA's enrollment providers. Enrollment providers transmit these data via secure interface to TSA. Referencing law enforcement, citizenship or immigration, regulatory violation, and intelligence databases, TSA uses applicants' biographic and biometric information collected during pre-enrollment, enrollment, or post-enrollment to conduct security threat assessments (STAs) and to verify applicants' identity (at enrollment and/or at the time of travel) and citizenship. TSA uses STA results to determine

whether an individual poses a low risk to transportation or national security justifying eligibility for TSA PreCheck.

TSA makes the final determination on eligibility for the TSA PreCheck Application Program and notifies the applicant of the decision. On average, applicants receive notification from TSA within two to three weeks of the submission of their completed applications. Approved applicants are issued a Known Traveler Number (KTN) that is used for multiple purposes. Airline passengers who submit their KTN when making airline reservations may be eligible for expedited screening on flights originating from U.S. airports.[1] TSA uses the traveler's KTN and other information during passenger pre-screening to verify that the individual traveling matches the information on TSA's list of known travelers and to confirm TSA PreCheck expedited screening eligibility. TSA may also use the information collected, or verify the KTN and KTN-holder information, to determine a KTN holder's eligibility for other programs, such as potential eligibility for a reduced fee for another vetting program or participation in other DHS Trusted Traveler programs. TSA also will use the information submitted for identity verification at airport security checkpoints.

Eligibility for the TSA PreCheck Application Program is within the sole discretion of TSA, which provides written notification to applicants denied eligibility, including reasons for the denial. Applicants who are initially deemed ineligible or are later identified to be ineligible due to the identification of new disqualifying information through recurrent vetting have an opportunity to correct cases of misidentification or inaccurate criminal or citizenship/immigration records. For example, if advised during the application eligibility review process that the criminal record discloses a disqualifying criminal offense, the applicant has 60 days from the date of the denial letter to submit written notification of an intent to correct any information he or she believes to be inaccurate. The applicant must also provide a certified, revised record, or the appropriate court must forward a certified true copy of the information. TSA will review any information submitted and make a final decision. If TSA does not receive a notification or a corrected record, the agency may make a final determination to deny eligibility. Individuals ineligible for the TSA PreCheck Application Program are screened at airport security checkpoints pursuant to TSA's screening protocols.

TSA is seeking a revision to the currently approved request to reflect additional enrollment and enrollment provider options in accordance with the TSA Modernization Act, Division K of the FAA Reauthorization Act of 2018, Public Law 115–254 (132 Stat. 3185; Oct. 5, 2018) at section 1937, codified at 49 U.S.C. 44919. TSA expects enrollment providers to offer additional TSA PreCheck Application Program enrollment opportunities at airports to reduce the burden on frequent travelers. As TSA continues to improve identity verification at enrollment, enrollment providers may use public records, commercial sources, or other databases containing identity information to assist in identity verification. This revision also addresses TSA's plans to utilize DHS components' services, provided via U.S. Customs and Border Protection and the Office of Biometric Identity Management, to support TSA's biometric-based identification at the checkpoint and citizenship verification through passport information provided by the Department of State. Lastly, TSA intends to collect information from TSA PreCheck members after enrollment through additional surveys to determine satisfaction and customer engagement with TSA PreCheck.

Average Annual Number of Respondents: An estimated 6,533,518 average respondents over a three-year period. This estimate includes initial enrollments, renewals, and current members who would respond to voluntary surveys, as well as non-renewing individuals who respond to voluntary surveys.

Average Annual Number of Responses: An estimated 8,080,040 average responses over a three-year period. There could be multiple responses per respondent depending on the requested information.

Estimated Annual Burden Hours: An estimated 3,397,652 average hours based on a three-year projection.[2] This estimate includes the time for pre-enrollment, all aspects of enrollment (including voluntary surveys), and correction of records if needed.

Estimated Cost Burden: A $252,601,799 average cost burden based on a three-year projection. With the addition of multiple enrollment providers, TSA plans to allow each provider to set its own enrollment fee. As such, TSA expects that the public-facing TSA PreCheck fee will vary across providers. In addition, TSA expects that the renewal fee will also decrease. For the purposes of estimating a cost burden, TSA has estimated that the fee will be approximately $85 for initial enrollments and drop to approximately $75 for renewals. These fees cover TSA's program costs, the FBI fee for the criminal history records check when required, and enrollment providers' costs.

Dated: May 15, 2020.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2020–10937 Filed 5–20–20; 8:45 am]

BILLING CODE 9110–05–P

[1] Passengers who are eligible for expedited screening typically will receive more limited physical screening, *e.g.,* will be able to leave on their shoes, light outerwear, and belt, to keep their laptop in its case, and to keep their 3–1–1 compliant liquids/gels bag in a carry-on. For airports with dedicated TSA PreCheck lanes, see *https://www.tsa.gov/precheck/map.*

[2] TSA updated the annual estimates for the respondents and burden hours since the submission of the 60-day notice, which indicated respondents of 3,113,122 and burden hours of 4,211,661.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–15]

60-Day Notice of Proposed Information Collection: FHA-Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, Customer Service, Servicing Fees, and 235 Loans, OMB Control No.: 2502–0583

AGENCY: Office of the Assistant Secretary for Housing- Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 20, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available

information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: FHA-Insured Mortgage Loan Servicing for Performing Loans; MIP Processing, Escrow Administration, Customer Services, Servicing Fees, and 235 Loans.

OMB Approval Number: 2502–0583.

Type of Request: Extension of currently approved collection.

Form Numbers: None.

Description of the need for the information and proposed use: This information request is a comprehensive collection for Mortgagees that service FHA-insured mortgage loans and are involved with the collection and payment of mortgage insurance premiums (MIPs), the processing of loan payments, escrow account administration, providing loan information and customer service to the Mortgagor, and assessing post-endorsement fees and charges, and servicing Section 235 loans.

Respondents: Servicers of FHA-insured mortgage loans.

Estimated Number of Respondents: 340.

Estimated Number of Responses: 73,801,022.

Frequency of Response: Monthly.

Average Hours per Response: 6–30 minutes.

Total Estimated Burdens: 1,489,563.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 2 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

The General Deputy Assistant Secretary for Housing, John L. Garvin, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the **Federal Register** Liaison for HUD, for purposes of publication in the **Federal Register**.

Dated: May 18, 2020.

Nacheshia Foxx,

Federal Liaison for the Department of Housing and Urban Development.

[FR Doc. 2020–10989 Filed 5–20–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2020–N057]; [FXES11140100000–201–FF01E00000]

Proposed Site Plan Under a Candidate Conservation Agreement With Assurances for the Fisher in Oregon; Enhancement of Survival Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), received an application for an enhancement of survival permit (permit) pursuant to the Endangered Species Act of 1973, as amended (ESA). If granted, the requested permit would authorize the applicant's take of the fisher, incidental to otherwise lawful activities should the species become federally listed under the ESA. The application is associated with a template candidate conservation agreement with assurances (CCAA) developed by the Service for the conservation of the fisher. The conservation measures in the CCAA are intended to provide a net conservation benefit to the fisher. We have also prepared a draft environmental action statement that the permit decision may be eligible for categorical exclusion under the National Environmental Policy Act. We provide this notice to open a public comment period and invite comments from all interested parties regarding the documents.

DATES: Submit written comments no later than June 22, 2020.

ADDRESSES: To request further information or submit written comments, please use one of the following methods:

- *Internet:* Documents may be viewed on the internet at *http://www.fws.gov/oregonfwo/.*
- *Email: ChinookCCAAcomments@fws.gov.* Include ''Chinook Fisher CCAA'' in the subject line of the message.
- *U.S. Mail:* State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service; 2600 SE 98th Avenue, Suite 100; Portland, OR 97266.
- *Fax:* 503–231–6195, Attn: Fisher CCAA.

FOR FURTHER INFORMATION CONTACT: Richard Szlemp (see **ADDRESSES**); telephone: 503–231–6179; facsimile: 503–231–6195. If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), received an application for an enhancement of survival permit (permit) from Chinook Forest Partners, LLC (applicant) in Oregon pursuant to section 10(a)(l)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). If granted, the requested permit would authorize take of the fisher (*Pekania pennanti*) incidental to the applicant's routine forest-related management activities should the species become federally listed under the ESA. The application includes a proposed individual site plan and is associated with a template candidate conservation agreement with assurances (CCAA) developed by the Service for the conservation of the fisher. The conservation measures in the CCAA are intended to provide a net conservation benefit to the fisher. We have prepared a draft environmental action statement (EAS) for our preliminary determination that the permit decision may be eligible for categorical exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We provide this notice to open a public comment period

and invite comments from all interested parties regarding the documents referenced above.

Background

A CCAA is a voluntary agreement whereby landowners agree to manage their lands to remove or reduce threats to species that may become listed under the ESA (64 FR 32726; June 17, 1999). CCAAs are intended to facilitate the conservation of proposed and candidate species, and species likely to become candidates in the near future, by giving non-Federal property owners incentives to implement conservation measures for declining species by providing certainty with regard to land, water, or resource use restrictions that might be imposed should the species later become listed as threatened or endangered under the ESA. In return for managing their lands to the benefit of the covered species, enrolled landowners receive assurances that additional regulatory requirements pertaining to the covered species will not be required if the covered species becomes listed as threatened or endangered under the ESA, so long as the CCAA remains in place and is being fully implemented.

A CCAA serves as the basis for the Service to issue permits to non-Federal participants pursuant to section 10(a)(l)(A) of the ESA. Application requirements and issuance criteria for permits under CCAAs are found in the Code of Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d). The Service developed a template CCAA for the West Coast distinct population segment (DPS) of the fisher in Oregon and a draft EAS for future issuance of permits under the finalized template to comply with NEPA. The template CCAA and the EAS were noticed for comment in the **Federal Register** (81 FR 15737; March 24, 2016). The template CCAA and EAS were finalized and signed by the Service on June 20, 2018.

The CCAA template established general guidelines and identified minimum conservation measures for potential participants in the CCAA. Interested participants can voluntarily enroll their properties under the CCAA through development of individual site plans prepared in accordance with the provisions of the CCAA and that are submitted as part of their permit applications. The permits would authorize incidental take of the fisher with assurances to qualifying landowners who carry out conservation measures that would benefit the West Coast DPS of the fisher.

Proposed Actions

We have received an application for an ESA section 10(a)(l)(A) permit under the template CCAA for the fisher from the applicant for their identified lands in Oregon. Chinook Forest Partners, LLC, including its subsidiary Chinook Forest Management, LLC, manages timberland on behalf of Siskiyou Timberlands, LLC, and is responsible for planning and carrying out forest management activities. Chinook Forest Partners, LLC seeks to enroll all of its managed Oregon timberlands in Douglas, Jackson, Josephine, and Klamath counties. These lands total approximately 62,000 acres in many separate parcels.

The requested permit would authorize incidental take of the fisher, should it become federally listed and affected by the applicant's routine forest-related management activities on their properties through June 20, 2048. Fisher are not currently known to occur on the applicant's proposed enrolled lands, but they have been located in the past on nearby lands.

The permit application includes a proposed site plan that describes the lands covered by the permit and the conservation measures required under the template CCAA that will be implemented on covered lands. The primary conservation measures provided in the site plan include:

- Allowing access to covered lands to conduct fisher surveys;
- Protecting fisher dens and their young by limiting disturbance and impacts to denning structures;
- Limiting trapping/nuisance control for other animals that could pose a risk to the fisher (trapping of fishers is prohibited by State of Oregon law);
- Allowing the potential future translocation of fishers onto enrolled lands; and
- Promoting the development of habitat structures that would support the fisher.

Public Comments

We are making the permit application package, including the individual site plan and draft EAS, available for public review and comment (see **ADDRESSES**). The final template CCAA and EAS that were finalized and signed by the Service on June 20, 2018, are also available for public information. You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on our proposed Federal action, including on the adequacy of the site plan prepared in accordance with the template CCAA, pursuant to the requirements for permits at 50 CFR parts 13 and 17.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address or other personal identifying information in your comments, 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA (42 U.S.C. 4321 *et seq.*), and their implementing regulations (50 CFR 17.22, and 40 CFR 1506.6, respectively).

Mary Abrams,

Deputy Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–10923 Filed 5–20–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS01000. L51010000.ER0000. LVRWF1906190. 19X; MO#4500144064]

Notice of Availability of the Record of Decision for the Proposed Resource Management Plan Amendment and Final Environmental Impact Statement for the Gemini Solar Project in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Department of Interior has prepared a Record of Decision (ROD) to authorize a right-of-way and amend the 1998 Las

Vegas Resource Management Plan (RMP) for the Gemini Solar Project, and by this notice, is announcing the availability of the ROD. This constitutes the Final Decision of the Department of the Interior and is effective immediately. The ROD is not subject to administrative appeal.

DATES: The Secretary of the Department of Interior signed the ROD on May 8, 2020.

ADDRESSES: Copies of the ROD are available for public inspection at the Southern Nevada District Office, Bureau of Land Management, 4701 N Torrey Pines Drive, Las Vegas, Nevada 89130, or via the internet at the project's ePlanning page at *https://go.usa.gov/xntTQ.*

FOR FURTHER INFORMATION CONTACT: Nicholas Pay, Energy & Infrastructure Project Manager, telephone 702–515–5284; address 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130–2301; email *blm_nv_sndo_geminisolar@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The applicant, Solar Partners XI, LLC (Arevia) proposed to construct, operate, maintain and decommission a 690 megawatt photovoltaic solar electric generating facility and associated generation tie-line and access road facilities on approximately 7,100 acres of federal lands administered by the BLM approximately 33 miles northeast of Las Vegas and directly south of the Moapa River Indian Reservation in Clark County, Nevada.

On June 7, 2019, the Notice of Availability (NOA) of the Draft RMP Amendment and Draft Environmental Impact Statement (EIS) for the Gemini Solar Project published in the **Federal Register** (84 FR 26701), which provided for a 90-day public comment period. The BLM held two public meetings. The public comment period closed September 5, 2019. The BLM received 114 substantive letters containing 1,147 individual substantive comments during the 90-day public comment period. The comments focused on range of alternatives; Mojave desert tortoise; bighorn sheep and migratory birds; threecorner milkvetch, other sensitive plants and native vegetation communities; Old Spanish National Historic Trail; change to Visual Resource Management Class; impacts to recreation; drainage impacts and hydrologic changes, erosion, and dust; and tribal concern.

On December 27, 2019, a NOA of the Proposed RMP Amendment and Final EIS for the Gemini Solar Project published in the **Federal Register** (84 FR 71455), which initiated a 30-day public protest period and a 60-day Governor's consistency review. The BLM received five (5) protests on the proposed land use plan amendment, the BLM considered each protest letter in its decision. The Protest Resolution Report was completed on March 6, 2020 and is available for public inspection as the addresses listed above. On March 6, 2020, BLM received a written response from the Governor's office with no inconsistencies identified.

After environmental analysis, consideration of public comments, and application of pertinent Federal laws, it is the decision of the Department of the Interior to authorize the Gemini Solar Project in Clark County, Nevada, and amend the 1998 Las Vegas RMP by selecting the Hybrid Alternative, which was the agency's Preferred Alternative in the Proposed RMP Amendment and Final EIS. Approval of these decisions constitutes the final decision of the Department of the Interior and, in accordance with the regulations at 43 CFR 4.410(a)(3), is not subject to appeal under Departmental regulations at 43 CFR part 4. Any challenge to these decisions, including the BLM Authorized Officer's issuance of the right-of-way as approved by this decision, must be brought in the Federal district court.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Jon K. Raby,

Nevada State Director.

[FR Doc. 2020–10922 Filed 5–20–20; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[20X LLUTW01000.54400000.EU0000. LVCLJ20J0800; UTU–94504]

Notice of Realty Action and Notice of Segregation: Legislated Conveyance of Public Lands to the City of Hyde Park in Cache County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action and notice of segregation.

SUMMARY: The Bureau of Land Management (BLM) proposes to convey an approximately 80-acre parcel of public lands located in Cache County, Utah, to the City of Hyde Park, pursuant to Section 1013 of the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019.

DATES: The BLM will not convey the parcel until at least July 20, 2020.

ADDRESSES: Salt Lake Field Office, Attention: Hyde Park Conveyance, 2370 South Decker Lake Boulevard, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Matt Preston, Field Manager (801) 977–4300, *utslmail@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Section 1013 of Public Law 116–9 directed the BLM to convey, without consideration, to the City of Hyde Park the following described public lands to be managed for public recreation or other public purposes consistent with uses allowed under the Act of June 14, 1926 (commonly known as the ''Recreation and Public Purposes Act''):

Salt Lake Meridian, Utah

T. 12 N., R. 1 E.,
Sec. 1, S½ NE¼.

The area described contains approximately 80 acres.

The legislatively-required disposal of this parcel, including both the surface and the mineral estate, is also consistent with Section 209 of the Federal Land Policy and Management Act (FLPMA), as amended, which allows the BLM to convey the mineral estate along with a parcel of land when, as here, the BLM has determined that there are no known mineral values in the land.

Conveyance of the identified public lands will be subject to the Canal Act of 1890 (43 U.S.C. 945), valid and existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities.

Upon publication of this Notice in the **Federal Register,** the above-described public lands will be segregated from appropriation under the public land laws, including the mining laws, except for the sale and conveyance provisions of the FLPMA. The temporary segregation will terminate upon: (1) Issuance of a conveyance document, (2) publication in the **Federal Register** of a

termination of the segregation, or (3) on May 21, 2022, unless extended by the BLM Utah State Director in accordance with 43 CFR 2711.1–2(d). Upon publication of this Notice in the **Federal Register,** the BLM is no longer accepting land use applications affecting the above-described public lands, except applications for the amendment of previously-filed rights-of-way applications or existing authorizations in accordance with 43 CFR 2807.15 and 43 CFR 2886.15.

After publication of this Notice in the **Federal Register,** the BLM will publish this Notice once each week for three consecutive weeks in a newspaper of general circulation in the general vicinity of the above-described public lands. As Congress has directed the BLM to convey this parcel to the City of Hyde Park, the BLM is not inviting comments on this realty action.

Authority: Public Law 116–9, Section 1013, 43 U.S.C. 1713, and 43 U.S.C. 1719.

Anita Bilbao,

Acting State Director.

[FR Doc. 2020–10887 Filed 5–20–20; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–645 and 731–TA–1495–1501 (Preliminary)]

Mattresses From Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam, provided for in subheadings 9404.21.00, 9404.29.10, 9404.29.90, 9401.40.00, and 9401.90.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and imports of mattresses from China that are alleged to be subsidized by the government of China.[2]

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 85 FR 23002 (April 24, 2020); 85 FR 22998 (April 24, 2020).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On March 31, 2020, Brooklyn Bedding (Phoenix, Arizona), Corsicana Mattress Company (Dallas, Texas), Elite Comfort Solutions (Newnan, Georgia), FXI, Inc. (Media, Pennsylvania), Innocor, Inc. (Media, Pennsylvania), Kolcraft Enterprises, Inc. (Chicago, Illinois), Leggett & Platt, Incorporated (Carthage, Missouri), the International Brotherhood of Teamsters (Washington, DC), and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (Washington, DC) filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of mattresses from China and LTFV imports of mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam. Accordingly, effective March 31, 2020, the Commission instituted countervailing duty investigation No. 701–TA–645 and antidumping duty investigation Nos. 731–TA–1495–1501 (Preliminary).

Notice of the institution of the Commission's investigations and of a conference through written testimony to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 7, 2020 (85 FR 19503). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference through written questions, submissions of opening remarks and written testimony, written responses to questions, and postconference briefs. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on May 15, 2020. The views of the Commission are contained in USITC Publication 5059 (May 2020), entitled *Mattresses from Cambodia, China, Indonesia, Malaysia, Serbia, Thailand, Turkey, and Vietnam: Investigation Nos. 701–TA–645 and 731–TA–1495–1501 (Preliminary).*

By order of the Commission.

Issued: May 15, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–10938 Filed 5–20–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0032]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Records of Acquisition and Disposition, Collectors of Firearms

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 22, 2020.

FOR FURTHER INFORMATION CONTACT: 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: 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:* Extension without change of a currently approved collection.

(2) *The Title of the Form/Collection:* Records of Acquisition and Disposition, Collectors of Firearms.

(3) *The agency form number, if any, and the applicable component of the Department* sponsoring the collection:

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: Business or other for-profit.

Abstract: The recordkeeping requirement for this collection is primarily to facilitate ATF's authority to inquire into the disposition of any firearm during the course of a criminal investigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 51,976 respondents will responds to this information collection annually, and it will take each respondent approximately 3.05 hours to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual total public burden hours associated with this collection is 158,527, which is equal to 155,928 hours (total time to prepare all inspection reports) + 2,599 hours (total time to create/maintain all record).

(7) *An Explanation of the Change in Estimates:* The adjustments associated with this IC include a decrease in number of respondents (collector licensees) and responses by 4,952, since the last renewal in 2017. Consequently, the total annual burden hours for this IC has also reduced by 12,257.

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 17, 2020

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–10942 Filed 5–20–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0097]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Supplemental Information on Water Quality Considerations—ATF Form 5000.30

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 22, 2020.

FOR FURTHER INFORMATION CONTACT: 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: 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:* Extension without change of a currently approved collection.

(2) *The Title of the Form/Collection:* Supplemental Information on Water Quality Considerations.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 5000.30. 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: None. Abstract: A person engaged in the business of manufacturing explosives is required to have a license under the provisions of

18 U.S.C 843. The Federal Water Pollution Control Act, 33 U.S.C. 1341, authorizes the execution of the Supplemental Information on Water Quality Considerations—ATF 5000.30, during the application process, in order to ensure compliance with the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 680 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 340 hours, which is equal to 680 (# of respondents) *.5 (30 minutes).

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 17, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–10943 Filed 5–20–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0016]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for Registration of Firearms Acquired by Certain Governmental Entities—ATF F 10 (5320.10)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 22, 2020.

FOR FURTHER INFORMATION CONTACT: 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: 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:* Extension without change of a currently approved collection.

(2) *The Title of the Form/Collection:* Application for Registration of Firearms Acquired by Certain Governmental Entities.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 10 (5320.10). 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: Federal Government. Other: State, Local, and Tribal Government. Abstract: State and local government agencies will use the Application for Registration of Firearms Acquired by Certain Governmental Entities—ATF Form 10 (5320.10) to register an otherwise unregisterable National Firearms Act (NFA). The NFA requires the registration of certain firearms under Federal Law. The Form 10 registration allows State and local agencies to comply with the NFA, and retain and use firearms that would otherwise have to be destroyed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 318 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 159 hours, which is equal to 318 (total respondents) *.5 (30 minutes or time/per response).

(7) *An Explanation of the Change in Estimates:* The adjustment associated with this IC is a reduction in the total respondents and responses for this IC by 1,189, since the last renewal in 2017. Consequently, the total burden hours and costs for this IC has also reduced by 595 hours and $713 respectively, since 2017.

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 17, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–10941 Filed 5–20–20; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0090]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Currently Approved Collection; National Firearms Act (NFA)—Special Occupational Taxes (SOT)—ATF Form 5630.7, ATF Form 5630.5R, and ATF Form 5630.5RC

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 20, 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: James Chancey, National Firearms Act Division either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *nfaombcomments@atf.gov,* or by telephone at 304–616–4500.

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:* National Firearms Act (NFA)—Special Occupational Taxes (SOT).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 5630.7, ATF Form 5630.5R, and ATF Form 5630.5RC.

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: This information collection requires that all new business owners who are subject to the Special Occupational Taxes (SOT) under the National Firearms Act (NFA) complete the Special Tax Registration and Return National Firearms Act (NFA)—ATF Form 5630.7. Taxpayers will also receive prepopulated printed copies of both the NFA Special Tax Renewal Registration and Renewal—ATF Form 5630.5R and the NFA Special Tax Location Registration Listing—ATF Form5630.5RC, so they can validate/correct their information and remit the required payment for the applicable tax year.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 3,000 new taxpayers will take 15 minutes to complete ATF Form 5630.7 annually. However, it will take 17,000 taxpayers approximately 20 minutes (10 minutes per form) to complete ATF Form 5630.5R and ATF Form 5630.5RC every year. The combined total respondents for this information collection is 20,000, while the combined response time is 35 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with ATF form 5630.7 is 755 hours. However, the total burden hours for ATF Form 5630.5R and ATF F 5630.5RC is 5,666 hours. Therefore, the estimated total public burden associated with this information collection is 6,416 hours, which is equal to 3,000 (# of respondents for ATF F 5630.7) * .25 (15 mins) + 17,000 (# of respondents for ATF F 5630.5R and ATF F 5630.5RC) * .3333 (20 mins).

7. *An Explanation of the Change in Estimates:* The adjustments associated with this collection include an increase in the total respondents and total burden hours by 13,650 and 4,328 respectively, since the last renewal in 2017. Due to more respondents, the public cost burden has also increased by $ 8,953.

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 17, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–10940 Filed 5–20–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0012]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Notice of Firearms Manufactured or Imported—ATF Form 2 (5320.2)

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until June 22, 2020.

FOR FURTHER INFORMATION CONTACT: 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: 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:* Extension without change of a currently approved collection.

(2) *The Title of the Form/Collection:* Notice of Firearms Manufactured or Imported.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 2 (5320.2).

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: Federal Government, and State, Local or Tribal Government.

Abstract: The Notice of Firearms Manufactured or Imported—ATF Form 2 (5320.2) is required of (1) a person who is qualified to manufacture National Firearms Act (NFA) firearms, or (2) a person who is qualified to import NFA firearms to register manufactured or imported NFA firearm(s).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 4,212 respondents will utilize the form approximately 3.415 times annually, and it will take each respondent 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 7,192 hours, which is equal to 4,212 (total respondents) * 3.415 (# of responses per respondent) * .5 (30 minutes).

(7) *An Explanation of the Change in Estimates:* The adjustments associated with this collection includes a decrease in both the number of respondents and responses for this IC by 340 and 1,161 respectively, since the last renewal in 2017. Due to less respondents, both the hourly and total public cost burden have also reduced by 581 hours and $ 697, since 2017.

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 17, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–10939 Filed 5–20–20; 8:45 am]

BILLING CODE 4410–14–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (20–049)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the NASA Advisory Council (NAC).

DATES: Tuesday, June 2, 2020, 10:00 a.m.–6:45 p.m., Eastern Time.

ADDRESSES: Virtual meeting via dial-in teleconference and WebEx only.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia Joseph, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, 202–358–4717; *marcia.joseph@nasa.gov.*

SUPPLEMENTARY INFORMATION: As noted above, this meeting will be available telephonically and by WebEx only. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll-free access number 1–888–455–2183 or toll access number 1–773–799–3802, and then the numeric participant passcode: 3122217 to participate in the meeting. Note: Please ''mute'' your phone. The WebEx link is: *https://nasaenterprise.webex.com/nasaenterprise/onstage/g.php?MTID=e18bf23e25e4ef98fd9d3cb71391d645b* and the meeting number is 907 327 400; the password is d7bJAXw3t*7 (case sensitive).

Note: Please be advised that the NASA large event WebEx account is being used to support this meeting; this WebEx account is incompatible with the newest Mac operating system introduced in October 2019—MacOS Catalina.

The agenda for the meeting will include reports from the following:

—Aeronautics Committee
—Human Exploration and Operations Committee
—Regulatory and Policy Committee
—Science Committee
—STEM Engagement Committee
—Technology, Innovation and Engineering Committee

In accordance with 41 CFR parts 101–6 and 102–3, Federal Advisory Committee Management; Final Rule, Section 102–3.150(b), this meeting is being held with less than 15 calendar days' notice due to technical and administrative priorities associated with this meeting. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–11008 Filed 5–20–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–20–0013; NARA–2020–041]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive comments by July 6, 2020.

ADDRESSES: You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

• *Federal eRulemaking Portal: http://www.regulations.gov.*

• *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov,* by mail at the address above, or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of the Army, Agency-wide, Performance and Research Injury Standalone Network System Master Files (DAA–AU–2018–0008).

2. Department of Commerce, National Telecommunications and Information Administration, First Net Program Records (DAA–0417–2018–0002).

3. Department of Health and Human Services, Administration for Children and Families, Records of the OHSEPR Electronic Case Management Records System (DAA–0292–2019–0001).

4. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Program Policy Directives (DAA–0571–2016–0001).

5. Securities and Exchange Commission, Agency-wide, US Securities and Exchange Commission Staff Interpretations (DAA–0266–2019–0005).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2020–10910 Filed 5–20–20; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for International Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for International Science and Engineering Meeting (AC–ISE) (#25104).

Date and Time: Thursday, June 18, 2020; 10:00 a.m. to 5:30 p.m. (EDT).

Connect to the Virtual Meeting: The AC–ISE meeting is fully virtual. Participants are required to process the meeting registration via Zoom. See below for details:

Register in advance for the meeting at the Zoom attendee registration link: *https://nsf.zoomgov.com/webinar/register/WN_Mcyz56Y2RISQSizK8DtK0g.* After registering, you will receive a confirmation email with a unique link to join the meeting.

If you have any login questions, please contact Kirk Grabowski, OISE IT Specialist, *kgrabows@associates.nsf.gov*).

Type of Meeting: Open.

Contact Person: Christopher Street, National Science Foundation, 2415 Eisenhower Avenue, Room W–17220, Alexandria, Virginia 22314; Telephone: 703–292–8568.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to international programs and activities.

Agenda

- Updates on OISE activities
- Briefing on MULTIPLIER Czech Republic Multiplier/MULTIPLIER Moving Forward
- Update on Science and Security
- NSF's COVID–19 Response
- COVID–19 and International Engagement
- Update on International Research Experiences for Students (IRES) Program
- Meet with NSF leadership

Dated: May 18, 2020.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2020–11007 Filed 5–20–20; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–134 and CP2020–142]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 26, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–134 and CP2020–142; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 148 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 15, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 *et seq.,* and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* May 26, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–10959 Filed 5–20–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88887; File No. SR-CboeBZX–2019–107]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, To Adopt Rule 14.11(m), Tracking Fund Shares, and To List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF

May 15, 2020.

I. Introduction

On December 12, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt BZX Rule 14.11(m) and to list and trade shares (''Shares'') of the Fidelity Value ETF, Fidelity Growth ETF, and Fidelity Opportunistic ETF (each a ''Fund,'' and, collectively, ''Funds''), each a series of the Fidelity Covington Trust (''Trust''), under proposed BZX Rule 14.11(m). The proposed rule change was published for comment in the **Federal Register** on December 31, 2019.[3]

On February 12, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[4] On February 13, 2020, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On March 26, 2020, the Commission published Amendment No. 1 for notice and comment and instituted proceedings under Section 19(b)(2)(B) of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87856 (December 23, 2019), 84 FR 72414.

[4] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-cboebzx-2019-107/srcboebzx2019107-6984660-214616.pdf*.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 88195, 85 FR 9888 (February 20, 2020). The Commission designated March 30, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

the Act[7] to determine whether to approve or disapprove the proposed rule change.[8] On April 7, 2020, the Exchange filed Amendment No. 3, which replaced and superseded the proposed rule change, as amended by Amendment No. 1.[9] On May 12, 2020, the Exchange filed Amendment No. 4 to the proposed rule change, which replaced and superseded the proposed rule change as amended by Amendment No. 3.[10] On May 14, 2020, the Exchange filed Amendment No. 5 to the proposed rule change, which replaced and superseded the proposed rule change as amended by Amendment No. 4.[11] The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 5, from interested persons and is approving the proposed rule change, as modified by Amendment No. 5, on an accelerated basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 5

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No. 5 to SR–CboeBZX–2019–107 amends and replaces in its entirety the proposal as amended by Amendment No. 4, which was submitted on May 12, 2020, which amended and replaced in its entirety Amendment No. 3, which was submitted on April 7, 2020, and amended and replaced in its entirety Amendment No. 1, which was submitted on February 12, 2020, and amended and replaced in its entirety the proposal as originally submitted on December 12, 2019.[12] The Exchange submits this Amendment No. 5 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to add new Rule 14.11(m) for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Tracking Fund Shares, which are securities issued by an actively managed open-end management investment company.[13]

Proposed Rule 14.11(m)

Proposed Rule 14.11(m)(3)(A) provides that the term ''Tracking Fund Share'' means a security that: (i) Represents an interest in an investment company registered under the Investment Company Act of 1940 (''Investment Company'') organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined Net Asset Value (''NAV''); (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined NAV; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Proposed Rule 14.11(m)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Tracking Fund Shares that meet the criteria of this Rule.

Proposed Rule 14.11(m)(2) provides that this proposed Rule is applicable only to Tracking Fund Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Tracking Fund Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(m)(2)(A)–(C) provide that the Exchange will file separate proposals under Section 19(b) of the Act before the listing of Tracking Fund Shares; and that transactions in Tracking Fund Shares will occur throughout the Exchange's trading hours; the minimum price variation for quoting and entry of orders in Tracking Fund Shares is $0.01.

Proposed Rule 14.11(m)(2)(D) provides that the Exchange will implement and maintain written surveillance procedures for Tracking Fund Shares and as part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Fund Portfolio of each series of Tracking Fund Shares.

Proposed Rule 14.11(m)(2)(E) provides that if the investment adviser to the Investment Company issuing Tracking Fund Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a ''fire wall'' between the investment adviser and

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 88481, 85 FR 18304 (April 1, 2020).

[9] Amendment No. 3 is available on the Commission's website at *https://www.sec.gov/comments/sr-cboebzx-2019-107/srcboebzx2019107-7055624-215408.pdf.* The Exchange filed and withdrew Amendment No. 2 on April 7, 2020.

[10] Amendment No. 4 is available on the Commission's website at *https://www.sec.gov/comments/sr-cboebzx-2019-107/srcboebzx2019107-7180931-216798.pdf.*

[11] Amendment No. 5 is available on the Commission's website at *https://www.sec.gov/comments/sr-cboebzx-2019-107/srcboebzx2019107-7196701-216862.pdf.*

[12] The Exchange notes that it submitted and subsequently withdrew Amendment No. 2 on April 7, 2020.

[13] The basis of this proposal are several applications for exemptive relief that were filed with the Commission and for which public notice was issued on November 14, 2019 and subsequent order granting certain exemptive relief to, among others, Fidelity Management & Research Company and FMR Co., Inc., Fidelity Beach Street Trust, and Fidelity Distributors Corporation (File No. 812–14364), issued on December 10, 2019 (the ''Application,'' ''Notice,'' and ''Order,'' respectively, and, collectively, the ''Exemptive Order''). *See* Investment Company Act Release Nos. 33683 (November 14, 2019), 84 FR 64140 (November 20, 2019) (the Notice) and 33712 (the Order). The Order specifically notes that ''granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act.'' The Exchange notes that it also referred to the application for exemptive relief orders (collectively, with the Application, the ''Proxy Applications'') and notices thereof (collectively, with the Notice, the ''Proxy Notices'') for T. Rowe Price Associates, Inc. and T. Rowe Price Equity Series, Inc. (File No. 812–14214 and Investment Company Act Release Nos. 33685 and 33713), Natixis ETF Trust II, et al. (File No. 812–14870 and Investment Company Act Release Nos. 33684 and 33711), Blue Tractor ETF Trust and Blue Tractor Group, LLC (File No. 812–14625 and Investment Company Act Release Nos. 33682 and 33710), and Gabelli ETFs Trust, et al. (File No. 812–15036 and Investment Company Act Release Nos. 33681 and 33708). While there are certain differences between the applications, the Exchange believes that each would qualify as Tracking Fund Shares under proposed Rule 14.11(m).

personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio and/or the Tracking Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Fund Portfolio and/or the Tracking Basket or has access to nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto.

Proposed Rule 14.11(m)(2)(F) provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket.

Proposed Rule 14.11(m)(3)(B) provides that the term ''Fund Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of NAV at the end of the business day.

Proposed Rule 14.11(m)(3)(C) provides that the term ''Reporting Authority'' in respect of a particular series of Tracking Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Tracking Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Tracking Basket; the Fund Portfolio; the amount of any cash distribution to holders of Tracking Fund Shares, NAV, or other information relating to the issuance, redemption or trading of Tracking Fund Shares. A series of Tracking Fund Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(m)(3)(D) provides that the term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (*e.g.,* systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 14.11(m)(3)(E) provides that the term ''Tracking Basket'' means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Tracking Fund Shares. The website for each series of Tracking Fund Shares shall disclose the following information regarding the Tracking Basket as required under this Rule 14.11(m), to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) Description of holding; (iv) Quantity of each security or other asset held; and (v) Percentage weight of the holding in the portfolio.

Proposed Rule 14.11(m)(4)(A) provides the initial listing criteria for a series of Tracking Fund Shares, which include the following: (A) Each series of Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) For each series, the Exchange will establish a minimum number of Tracking Fund Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Tracking Fund Shares that the NAV per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the NAV, the Tracking Basket, and the Fund Portfolio; and (iii) all Tracking Fund Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Rule 14.11(m)(4)(B) provides that each series of Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria: (i) The Tracking Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time; and (ii) the Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; (iii) upon termination of an Investment Company, the Exchange requires that Tracking Fund Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or Statement of Additional Information.

Additionally, proposed Rule 14.11(m)(4)(B)(iii) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Tracking Fund Shares pursuant to Rule 14.12 under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Tracking Fund Shares, there are fewer than 50 beneficial holders of the series of Tracking Fund Shares for 30 or more consecutive trading days; (b) if either the Tracking Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Tracking Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission or the Commission Staff under the 1940 Act to the Investment Company with respect to the series of Tracking Fund Shares; (d) if any of the requirements set forth in this rule are not continuously maintained; (e) if any of the applicable Continued Listing Representations for the issue of Tracking Fund Shares are not continuously met; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(m)(4)(B)(iv) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or

circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

Proposed Rule 14.11(m)(5) provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Tracking Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Tracking Fund Shares; NAV; or other information relating to the purchase, redemption, or trading of Tracking Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Policy Discussion—Proposed Rule 14.11(m)

The purpose of the structure of Tracking Fund Shares is to provide investors with the traditional benefits of ETFs [14] while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Tracking Fund Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Rule 14.11(i)), Tracking Fund Shares differ from Managed Fund Shares in one key way.[15] A series of Tracking Fund Shares will disclose the Tracking Basket on a daily basis which, as described above, is designed *to closely track* the performance of the holdings of the Investment Company, instead of the *actual holdings* of the Investment Company, as provided by a series of Managed Fund Shares.[16]

For the arbitrage mechanism for any ETF to function effectively, authorized participants, arbitrageurs, and other market participants (collectively, ''Market Makers'') need sufficient information to accurately value shares of a fund to transact in both the primary and secondary market. The Tracking Basket is designed to closely track the daily performance of the Fund Portfolio.

Given the correlation between the Tracking Basket and the Fund Portfolio,[17] the Exchange believes that the Tracking Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of Tracking Fund Shares diverge. If shares began trading at a discount to the Tracking Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit,[18] redeem them in exchange for a redemption basket reflecting the NAV per share of the Fund Portfolio. The purchases of shares would reduce the supply of shares in the market, and thus tend to drive up the shares' market price closer to the fund's NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a fund is trading at a premium to the Tracking Basket, Market Makers may sell shares short and take a long position in the Tracking Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Tracking Basket securities in an attempt to profit when shares are trading at a discount to the Tracking Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

[14] For purposes of this filing, the term ETF will include only Portfolio Depositary Receipts as defined in Rule 14.11(b), Index Fund Shares as defined in Rule 14.11(c), Managed Fund Shares as defined in Rule 14.11(i), and ETF Shares as defined in Rule 14.11(l), along with the equivalent products defined in the rules of other national securities exchanges.

[15] The Exchange notes that there is one additional substantive difference between proposed Rule 14.11(m) and Rule 14.11(i): Proposed Rule 14.11(m) would require a rule filing under Section 19(b) prior to listing any product on the Exchange meaning that no series of Tracking Fund Shares could be listed on the Exchange pursuant to Rule 19b–4(e) and there are no proposed rules comparable to the quantitative portfolio holdings standards from Rule 14.11(i).

[16] Proposed Rule 14.11(m)(4)(B)(iii) will, however, require each series of Tracking Fund Shares to at a minimum disclose the entirety of its portfolio holdings within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[17] As provided in the Proxy Notices, funds and their respective advisers will take remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund's crossing a threshold, the adviser will promptly call a meeting of the fund's board of directors and will present the board or committee with recommendations for appropriate remedial measures. The board would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any, action would be appropriate. Specifically, the Proxy Applications and Proxy Notices provide that such a meeting would occur: (1) If the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or bid/ask price, on one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

[18] Tracking Fund Shares will be purchased or redeemed only in large aggregations, or ''creation units,'' and the Tracking Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Tracking Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.[19] Consistent with the Commission's view, the Exchange believes that the arbitrage mechanism for Tracking Fund Shares will be sufficient to keep secondary market prices in line with NAV.

The Exchange notes that a significant amount of information about each fund and its Fund Portfolio will be publicly available at all times. Each series will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Tracking Fund Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per share basis for each fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended. The website and information will be publicly available at no charge.

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material non-public information, the Exchange believes that proposed Rules 14.11(m)(2)(E) and (F) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Tracking Fund Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Rule 14.11(m)(2)(F) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Tracking Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto will act to prevent any individual or entity from sharing such information externally. Additionally, the requirement that any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Tracking Fund Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Tracking Fund Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Tracking Fund Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted in proposed Rule 14.11(m)(2)(D), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of each series of Tracking Fund Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series of Tracking Fund Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Tracking Fund Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

Trading Halts

As described above, proposed Rule 14.11(m)(4)(B)(iv) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: The net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

[19] *See* Notice at 64144. The Commission also notes that as long as arbitrage continues to keep the Fund's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs. *See Id.,* at 64145.

Availability of Information

As noted above, Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.* The Exchange also notes that the Proxy Applications provide that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Tracking Fund Shares.

Information regarding market price and trading volume of the shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the shares will be published daily in the financial section of newspapers. Quotation and last sale information for the shares will be available via the Consolidated Tape Association (''CTA'') high-speed line.

Trading Rules

The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the shares subject to the Exchange's existing rules governing the trading of equity securities.[20] As provided in proposed Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01. The Exchange has appropriate rules to facilitate trading in Tracking Fund Shares during all trading sessions.

Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF

The Shares are offered by the Trust, which is organized as a business trust under the laws of The Commonwealth of Massachusetts. The Trust is registered with the Commission as an open-end investment company and will file a registration statement on behalf of the Funds on Form N–1A (''Registration Statement'') with the Commission.[21] Fidelity Management & Research Company or FMR Co., Inc. (the ''Adviser'') will be the investment adviser to the Funds. The Adviser is not registered as a broker-dealer, but is affiliated with numerous broker-dealers. The Adviser represents that a fire wall exists and will be maintained between the respective personnel at the Adviser and affiliated broker-dealers with respect to access to information concerning the composition and/or changes to each Fund's portfolio and Tracking Basket. Personnel who make decisions on a Fund's portfolio composition and/or Tracking Basket or who have access to nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Tracking Basket. The Funds' sub-advisers, FMR Investment Management (UK) Limited, Fidelity Management & Research (Hong Kong) Limited, and Fidelity Management & Research (Japan) Limited (each a ''Sub-Adviser'' and, collectively, the ''Sub-Advisers''), are not registered as a broker-dealer but are affiliated with numerous broker-dealers. Sub-Adviser personnel who make decisions regarding a Fund's Fund Portfolio and/or Tracking Basket or who have access to information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio and/or Tracking Basket. In the event that (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer; it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund Portfolio and/or Tracking Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Tracking Basket. Any person or entity, including any service provider for the Funds, who has access to nonpublic information regarding a Fund Portfolio or Tracking Basket or changes thereto for a Fund or Funds will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or Tracking Basket or changes thereto. Further, any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer, has erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket. Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Shares will conform to the initial and continued listing criteria under Rule 14.11(m) as well as all terms in the Exemptive Order. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 under the Act.[22] A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per share of each Fund will be calculated daily and will be made available to all market participants at the same time. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

Fidelity Blue Chip Value ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Order and the holdings will be consistent with all requirements in the Application and Order.[23] Any foreign common stocks

[20] With respect to trading in Tracking Fund Shares, all of the BZX Member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange will continue to monitor its Members for compliance with such requirements.

[21] The Trust intends to file a post-effective amendment to the Registration Statement in the near future. The descriptions of the Funds and the Shares contained herein are based, in part, on information that will be included in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1).

[22] *See* 17 CFR 240.10A–3.

[23] Pursuant to the Order, the Fund's permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (''foreign common stocks''), exchange-traded preferred stocks, exchange-traded American Depositary Receipts (''ADRs''), exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents.

Continued

held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund seeks long-term growth of capital as its investment objective. In order to achieve its investment objective, the Fund typically invests primarily in: (i) In blue chip companies (companies that, in the Adviser's view, are well-known, well-established and well-capitalized), which generally have large or medium market capitalizations; and (ii) companies that the Adviser believes are undervalued in the marketplace in relation to factors such as assets, sales, earnings, growth potential, or cash flow, or in relation to securities of other companies in the same industry (stocks of these companies are often called ''value'' stocks).

Fidelity Blue Chip Growth ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Order and the holdings will be consistent with all requirements in the Application and Order.[24] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund seeks long-term growth of capital as its investment objective. In order to achieve its investment objective, the Fund typically invests primarily in: (i) In blue chip companies (companies that, in the Adviser's view, are well-known, well-established and well-capitalized), which generally have large or medium market capitalizations; and (ii) companies that the Adviser believes have above-average growth potential (stocks of these companies are often called ''growth'' stocks).

Fidelity New Millennium ETF

The Fund's holdings will conform to the permissible investments as set forth in the Application and Order and the holdings will be consistent with all requirements in the Application and Order.[25] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund seeks long-term growth of capital as its investment objective. In order to achieve its investment objective, the Fund typically invests primarily in: (i) Companies that may benefit from opportunities created by long-term changes in the marketplace by examining technological advances, product innovation, economic plans, demographics, social attitudes, and other factors, which can lead to investments in small and medium-sized companies; and (ii) both ''growth'' and ''value'' stocks based on fundamental analysis of factors such as each issuer's financial condition and industry position, as well as market and economic conditions.

Tracking Basket for the Proposed Funds

For the Funds, the Tracking Basket will consist of a combination of the Fund's recently disclosed portfolio holdings and representative ETFs. ETFs selected for inclusion in the Tracking Basket will be consistent with the Fund's objective and selected based on certain criteria, including, but not limited to, liquidity, assets under management, holding limits and compliance considerations. Representative ETFs can provide a useful mechanism to reflect a Fund's holdings' exposures within the Tracking Basket without revealing a Fund's exact positions.[26] Intraday pricing information for all constituents of the Tracking Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The Exchange notes that each Fund's NAV will form the basis for creations and redemptions for the Funds and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares. The Adviser expects that the Shares of the Funds will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as a Fund's Tracking Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In the event that the value of the Tracking Basket is not the same as a Fund's NAV, the creation and redemption baskets will consist of the securities included in the Tracking Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Tracking Basket, as further described below.

The Tracking Basket will be constructed utilizing a covariance matrix based on an optimization process to minimize deviations in the return of the Tracking Basket relative to the Fund. The proprietary optimization process mathematically seeks to minimize three key parameters that the Adviser believes are important to the effectiveness of the Tracking Basket as a hedge: Tracking error (standard deviation of return differentials between the Tracking Basket and the Fund), turnover cost, and basket creation cost.[27] Typically, the Tracking Basket is expected to be rebalanced on schedule with the public disclosure of the Fund's holdings; however, a new optimized Tracking Basket may be generated as frequently as daily, and therefore, rebalancing may occur more frequently at the Adviser's discretion. In determining whether to rebalance a new optimized Tracking Basket, the Adviser will consider various factors, including liquidity of the securities in the Tracking Basket, tracking error, and the cost to create and trade the Tracking Basket.[28] For

With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

[24] Pursuant to the Order, the Fund's permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, foreign common stocks, exchange-traded preferred stocks, ADRs, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

[25] Pursuant to the Order, the Fund's permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, foreign common stocks, exchange-traded preferred stocks, ADRs, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

[26] The set of ETFs that are ''representative'' to be used in the Tracking Basket will depend on certain factors, including the Fund's investment objective, past holdings, and benchmark, and may change from time to time. For example, a U.S. diversified fund benchmarked to a diversified U.S. index would use liquid U.S. exchange-traded ETFs to capture size (large, mid or small capitalization), style (growth or value) and/or sector exposures in the Fund's portfolio. Leveraged and inverse ETFs will not be included in the Tracking Basket. ETFs may constitute no more than 50% of the Tracking Basket's assets.

[27] Tracking error measures the deviations between the Tracking Basket and Fund. Turnover cost and basket creation cost are measures of the cost to create and maintain the Tracking Basket as a hedge.

[28] The Adviser uses a trading cost model to develop estimates of costs to trade a new Tracking Basket. There are essentially two elements to this

example, if the Adviser determines that a new Tracking Basket would reduce the variability of return differentials between the Tracking Basket and the Fund when balanced against the cost to trade the new Tracking Basket, rebalancing may be appropriate. The Adviser will periodically review the Tracking Basket parameters and Tracking Basket performance and process.

As noted above, each Fund will also disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter. As described above, the Exchange notes that the concept of the Tracking Basket employed under this structure is designed to provide investors with the traditional benefits of ETFs while protecting the Funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a Fund.

Policy Discussion—Proposed Funds

Separately and in addition to the rationale supporting the arbitrage mechanism for Tracking Fund Shares more broadly above, the Exchange also believes that the particular instruments that may be included in each Fund Portfolio and Tracking Basket do not raise any concerns related to the Tracking Baskets being able to closely track the NAV of the Funds because such instruments include only instruments that trade on an exchange contemporaneously with the Shares.[29] The Funds will also comply with the initial and continued listing requirements under Proposed Rule 14.11(m) applicable to Tracking Fund Shares. In addition, a Fund's Tracking Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund. The Exchange and the Adviser agree with language in the Notice that specifically states that ''in order to facilitate arbitrage, each Fund's portfolio and Tracking Basket will only include certain securities that trade on an exchange contemporaneously with the Fund's Shares. Because the securities would be exchange traded, market participants would be able to accurately price and readily trade the securities in the Tracking Basket for purposes of assessing the intraday value of the Fund's portfolio holdings and to hedge their positions in the Fund's Shares.'' [30]

The Adviser anticipates that the returns between a Fund and its respective Tracking Basket will have a consistent relationship and that the deviation in the returns between a Fund and its Tracking Basket will be sufficiently small such that the Tracking Basket will provide Market Makers with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Funds will allow Market Makers to understand the relationship between the performance of a Fund and its Tracking Basket. Market Makers will be able to estimate the value of and hedge positions in a Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

The Exchange notes that a significant amount of information about each Fund and its Fund Portfolio is publicly available at all times. Each series will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Tracking Fund Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended.

Additional Information

The Exchange represents that the Shares of the Funds will continue to comply with all other proposed requirements applicable to Tracking Fund Shares, including the dissemination of key information such as the Tracking Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Tracking Fund Shares, and firewalls as set forth in the proposed Exchange rules applicable to Tracking Fund Shares and the orders approving such rules.

Price information for the exchange-listed instruments held by the Funds, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities. Moreover, U.S.-listed equity securities held by the Funds will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[31] Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All futures contracts that the Funds may invest in will be traded on a U.S. futures exchange. The Exchange

cost: (1) The cost to purchase securities constituting the Tracking Basket, *i.e.,* the cost to put on the hedge for the Authorized Participant, and (2) the cost of any adjustments that need to be made to the composition of the Tracking Basket, *i.e.,* the cost to the Authorized Participant to change or maintain the hedge position. The inclusion of the trading cost model in the optimization process is intended to result in a Tracking Basket that is cost effective and liquid without compromising its tracking ability.

[29] The Exchange notes that to the extent that the Fund Portfolio or Tracking Basket include any foreign common stocks, such securities will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[30] The Exchange notes that the instruments enumerated herein are consistent with the investable universe contemplated in the Notice. Specifically, the Notice provides that ''Each Fund may invest only in ETFs, Exchange-traded notes, Exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares, Exchange-traded preferred stocks, Exchange-traded American depositary receipts, Exchange-traded real estate investment trusts, Exchange-traded commodity pools, Exchange-traded metals trusts, Exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. All futures contracts that a Fund may invest in will be traded on a U.S. futures exchange. For these purposes, an ''Exchange'' is a national securities exchange as defined in section 2(a)(26) of the [1940] Act.'' *See* Notice at 64143.

[31] For a list of the current members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

or the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying U.S. exchange-listed equity securities, and U.S. exchange-listed futures with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying equity securities, and U.S. exchange-listed futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [32] in general and Section 6(b)(5) of the Act [33] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 14.11(m) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Tracking Fund Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(m)(4)(A) provides the initial listing criteria for a series of Tracking Fund Shares, which include the following: (A) Each series of Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) For each series, the Exchange will establish a minimum number of Tracking Fund Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Tracking Fund Shares that the NAV per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the NAV, the Tracking Basket, and the Fund Portfolio.

Proposed Rule 14.11(m)(4)(B) provides that each series of Tracking Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria: (i) The Tracking Basket will be disseminated at least once daily and will be made available to all market participants at the same time; (ii) the Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; (iii) upon termination of an Investment Company, the Exchange requires that Tracking Fund Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or Statement of Additional Information.

Additionally, proposed Rule 14.11(m)(4)(B)(iii) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Tracking Fund Shares pursuant to Rule 14.12 under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Tracking Fund Shares, there are fewer than 50 beneficial holders of the series of Tracking Fund Shares for 30 or more consecutive trading days; (b) if either the Tracking Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Tracking Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Tracking Fund Shares; (d) if any of the requirements set forth in this rule are not continuously maintained; (e) if any of the applicable Continued Listing Representations for the issue of Tracking Fund Shares are not continuously met; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(m)(4)(B)(iv) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material non-public information, the Exchange believes that proposed Rules 14.11(m)(2)(E) and (F) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Tracking Fund Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares as well as the information

[32] 15 U.S.C. 78f.

[33] 15 U.S.C. 78f(b)(5).

that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Rule 14.11(m)(2)(F) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Tracking Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto will act to prevent any individual or entity from sharing such information externally. Additionally, the requirement that any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer will erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Tracking Fund Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares (the Tracking Basket) as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to firewalls and information protection will act as a strong safeguard against any misuse and improper dissemination of information related to the securities included in or changes made to the Fund Portfolio and/or the Tracking Basket. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

As noted above, the purpose of the structure of Tracking Fund Shares is to provide investors with the traditional benefits of ETFs while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Tracking Fund Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Rule 14.11(i)), Tracking Fund Shares differ from Managed Fund Shares in one key way.[34] A series of Tracking Fund Shares will disclose the Tracking Basket on a daily basis which, as described above, is designed *to closely track* the performance of the holdings of the Investment Company, instead of the *actual holdings* of the Investment Company, as provided by a series of Managed Fund Shares.[35]

For the arbitrage mechanism for any ETF to function effectively, Market Makers need sufficient information to accurately value shares of a fund to transact in both the primary and secondary market. The Tracking Basket is designed to closely track the daily performance of the holdings of a series of Tracking Fund Shares.

Given the correlation between the Tracking Basket and the Fund Portfolio,[36] the Exchange believes that the Tracking Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of Tracking Fund Shares diverge. If shares began trading at a discount to the Tracking Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit,[37] redeem them in exchange for a redemption basket reflecting the NAV per share of the fund's portfolio holdings. The purchases of shares would reduce the supply of shares in the market, and thus tend to drive up the shares' market price closer to the fund's NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a fund is trading at a premium to the Tracking Basket, Market Makers may sell shares short and take a long position in the Tracking Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Tracking Basket securities in an attempt to profit when shares are trading at a discount to the Tracking Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

[34] The Exchange notes that there is one additional substantive difference between proposed Rule 14.11(m) and Rule 14.11(i): Proposed Rule 14.11(m) would require a rule filing under Section 19(b) prior to listing any product on the Exchange meaning that no series of Tracking Fund Shares could be listed on the Exchange pursuant to Rule 19b–4(e) and there are no proposed rules comparable to the quantitative portfolio holdings standards from Rule 14.11(i).

[35] Proposed Rule 14.11(m)(4)(B)(ii) will, however, require each series of Tracking Fund Shares to at a minimum disclose the entirety of its portfolio holdings within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[36] As provided in the Proxy Notices, funds and their respective advisers will take remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund's crossing a threshold, the adviser will promptly call a meeting of the fund's board of directors and will present the board or committee with recommendations for appropriate remedial measures. The board would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any, action would be appropriate. Specifically, the Proxy Applications and Proxy Notices provide that such a meeting would occur: (1) If the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or bid/ask price, on one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

[37] Tracking Fund Shares will be purchased or redeemed only in large aggregations, or ''creation units,'' and the Tracking Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Tracking Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.[38] Consistent with the Commission's view, the Exchange believes that the arbitrage mechanism for Tracking Fund Shares will be sufficient to keep secondary market prices in line with NAV.

The Exchange notes that a significant amount of information about each fund and its Fund Portfolio is publicly available at all times. Each series will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Tracking Fund Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Tracking Fund Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Tracking Fund Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Tracking Fund Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted in proposed Rule 14.11(m)(2)(D), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Tracking Fund Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series of Tracking Fund Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Tracking Fund Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

As noted above, Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.* The Exchange also notes that the Proxy Applications provide that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Tracking Fund Shares.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed line. The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. As provided in proposed Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01.

The Funds

Separately and in addition to the rationale supporting the arbitrage mechanism for Tracking Fund Shares more broadly above, the Exchange also believes that the particular instruments that may be included in each Fund's portfolio and Tracking Basket do not raise any concerns related to the Tracking Baskets being able to closely track the NAV of the Funds because such instruments include only instruments that trade on an exchange contemporaneously with the Shares. In addition, a Fund's Tracking Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund. The Exchange and the Adviser agree with language in the Notice that specifically states that ''in order to facilitate arbitrage, each Fund's portfolio and Tracking Basket will only include certain securities that trade on an exchange contemporaneously with the Fund's Shares. Because the securities would be exchange traded, market participants would be able to accurately price and readily trade the securities in the Tracking Basket for purposes of assessing the intraday value of the Fund's portfolio holdings and to hedge their positions in the Fund's Shares.'' [39]

[38] *See* Notice at 64144. The Commission also notes that as long as arbitrage continues to keep the Fund's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs. *See Id.,* at 64145.

[39] The Exchange notes that the instruments enumerated herein are consistent with the investable universe contemplated in the Notice. Specifically, the Notice provides that ''Each Fund may invest only in ETFs, Exchange-traded notes, Exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares, Exchange-traded preferred stocks, Exchange-traded American depositary receipts, Exchange-traded real estate investment trusts, Exchange-traded commodity pools, Exchange-traded metals trusts, Exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with

The Adviser anticipates that the returns between a Fund and its respective Tracking Basket will have a consistent relationship and that the deviation in the returns between a Fund and its Tracking Basket will be sufficiently small such that the Tracking Basket will provide Market Makers with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Funds will allow Market Makers to understand the relationship between the performance of a Fund and its Tracking Basket. Market Makers will be able to estimate the value of and hedge positions in a Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

The Exchange notes that a significant amount of information about each Fund and its Fund Portfolio is publicly available at all times. Each series will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Intraday pricing information for all constituents of the Tracking Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. Each series of Tracking Fund Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended.

The Exchange represents that the Shares of the Funds will continue to comply with all other proposed requirements applicable to Tracking Fund Shares, which also generally correspond to the requirements for Managed Fund Shares, including the dissemination of key information such as the Tracking Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the series of Tracking Fund Shares, and firewalls as set forth in the proposed Exchange rules applicable to Tracking Fund Shares and the orders approving such rules. Moreover, U.S.-listed equity securities held by the Funds will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[40] All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. Rather, the Exchange notes that the proposed rule change will facilitate the listing of a new type of actively-managed exchange-traded product, thus enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 5, is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.[41] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 5, is consistent with Section 6(b)(5) of the Act,[42] which requires, among other things, that the Exchange's rules be designed 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.

A. Proposed BZX Rule 14.11(m)

Pursuant to the Exemptive Order,[43] Tracking Fund Shares would not be required to disclose the actual holdings of the Investment Company on a daily basis. Instead, Tracking Fund Shares would be required to publicly disclose the Tracking Basket, which is designed to closely track the performance of the

the Shares, as well as cash and cash equivalents . . . All futures contracts that a Fund may invest in will be traded on a U.S. futures exchange. For these purposes, an ''Exchange'' is a national securities exchange as defined in section 2(a)(26) of the [1940] Act.'' *See* Notice at 64143.

[40] For a list of the current members of ISG, *see www.isgportal.com*. The Exchange notes that not all components of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[41] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[42] 15 U.S.C. 78f(b)(5).

[43] *See supra* note 13.

holdings of the Investment Company, on a daily basis. Like other registered management investment companies, Tracking Fund Shares would be required to disclose the actual holdings of the Investment Company within at least 60 days following the end of every fiscal quarter. For reasons described below, the Commission believes that BZX Rule 14.11(m) is sufficiently designed to be consistent with the Act and to help prevent fraudulent and manipulative acts and practices and to maintain a fair and orderly market for Tracking Fund Shares.

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Tracking Fund Shares on the Exchange. The Commission notes that the proposed listing and trading rules for Tracking Fund Shares, where appropriate, are similar to existing Exchange rules relating to exchange-traded funds, in particular, Managed Portfolio Shares.[44] Prior to listing and/or trading on the Exchange, the Exchange must file a separate proposed rule change pursuant to Section 19(b) of the Act for each series of Tracking Fund Shares.[45] All such shares listed and/or traded under proposed BZX Rule 14.11(m) will be subject to the full panoply of BZX rules and procedures that currently govern the trading of equity securities on the Exchange.

For the initial listing of each series of Tracking Fund Shares under proposed BZX Rule 14.11(m), the Exchange must establish a minimum number of Tracking Fund Shares required to be outstanding at the commencement of trading. In addition, the Exchange must obtain a representation from the issuer of Tracking Fund Shares that the NAV per share will be calculated daily and that the NAV, Tracking Basket, and Fund Portfolio will be made available to all market participants at the same time. Moreover, all Tracking Fund Shares must have a stated investment objective, which must be adhered to under Normal Market Conditions.

Although the actual portfolio holdings of the Tracking Fund Shares are not publicly disclosed on a daily basis, the Commission believes that the proposed listing standards under proposed BZX Rule 14.11(m), along with the Tracking Basket, are adequate to ensure transparency of key information regarding the Tracking Fund Shares and that such information is made available to market participants at the same time. Namely, the Tracking Basket would be disseminated at least once daily and would be made available to all market participants at the same time.[46] In addition, like all other registered management investment companies, each series of Tracking Fund Shares would be required to publicly disclose its portfolio holdings information on a quarterly basis, within at least 60 days following the end of every fiscal quarter.[47] If the Exchange becomes aware that the NAV, the Tracking Basket, or the Fund Portfolio is not being made available to all market participants at the same time, then the Exchange will halt trading in such series until such times as the NAV, Tracking Basket, or Fund Portfolio is available to all market participants, as applicable.[48] Further, if either the Tracking Basket or Fund Portfolio is not made available to all market participants at the same time, the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Tracking Fund Shares. Moreover, the Exchange represents that a series of Tracking Fund Shares' Statement of Additional Information and shareholder reports will be available for free upon request from the Investment Company, and that those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

The Commission also finds that the Exchange's rules with respect to trading halts and suspensions under proposed BZX Rule 14.11(m) are designed to help maintain a fair and orderly market. According to the proposal, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Further, trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Tracking Basket or the Fund Portfolio, or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[49]

Other provisions of the Exchange's rule pertaining to suspension are substantially consistent with provisions that currently exist for Managed Fund Shares and Managed Portfolio Shares. Those provisions state that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under BZX Rule 14.12 for, a series of Tracking Fund Shares if: (1) Following the initial twelve-month period after commencement of trading on the Exchange of a series of Tracking Fund Shares, there are fewer than 50 beneficial holders of the series of the Tracking Fund Shares for 30 or more consecutive trading days;[50] (2) the Investment Company issuing the Tracking Fund Shares has failed to file any required filings with the Commission, or if the Exchange becomes aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Tracking Fund Shares;[51] (3) any of the listing requirements set forth in BZX Rule 14.11(m) are not continuously maintained;[52] (4) any of the applicable Continued Listing Representations[53] for the issue of Tracking Fund Shares are not continuously met;[54] or (5) such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings of the Tracking Fund Shares on the Exchange inadvisable.[55]

Finally, the Commission believes that the requirements of proposed BZX Rule 14.11(m) are consistent with the Act and, more specifically, are reasonably designed to help prevent fraudulent and manipulative acts and practices. The Commission notes that, because Tracking Fund Shares would not publicly disclose on a daily basis

[44] The proposed rules relating to limitation of liability (proposed BZX Rule 14.11(m)(5)), termination (proposed BZX Rule 14.11(m)(4)(B)(iv)), and voting (proposed BZX Rule 14.11(m)(4)(B)(v)) are substantively similar or identical to existing provisions for Managed Fund Shares and Managed Portfolio Shares. *See* BZX Rule 14.11(i)(5) and BZX Rule 14.11(k)(5), BZX Rule 14.11(i)(4)(B)(v) and BZX Rule 14.11(k)(4)(B)(v), and BZX Rule 14.11(i)(4)(B)(vi) and BZX Rule 14.11(k)(4)(B)(vi), respectively.

[45] *See* proposed BZX Rule 14.11(m)(2)(A).

[46] *See* proposed BZX Rule 14.11(m)(4)(B)(i).

[47] *See* proposed BZX Rule 14.11(m)(3)(A). *See also* Rules 30e–1, 30d–1, and 30b1–5 under the 1940 Act.

[48] *See* proposed BZX Rule 14.11(m)(4)(B)(iv)(b).

[49] *See* proposed BZX Rule 14.11(m)(4)(B)(iv)(a).

[50] *See* proposed BZX Rule 14.11(m)(4)(B)(iii)(a).

[51] *See* proposed BZX Rule 14.11(m)(4)(B)(iii)(c).

[52] *See* proposed BZX Rule 14.11(m)(4)(B)(iii)(d).

[53] BZX Rule 14.11(a) defines ''Continued Listing Representations'' as any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, intraday indicative values, and VIIV (as applicable), or the applicability of Exchange listing rules specified in any filing to list a series of Other Securities (as defined in BZX Rule 14.11(a)).

[54] *See* proposed BZX Rule 14.11(m)(3)(B)(iii)(e).

[55] *See* proposed BZX Rule 14.11(m)(3)(B)(iii)(f).

information about the actual holdings of the Fund Portfolio, it is vital that such information be kept confidential and not be subject to misuse. Accordingly, to help ensure that the portfolio information be kept confidential and the shares not be susceptible to fraud or manipulation, proposed BZX Rule 14.11(m)(2)(E) requires that, if the investment adviser to the Investment Company issuing Tracking Fund Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser must erect and maintain a ''fire wall'' between such investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio and/or the Tracking Basket. Further, the Rule also requires that any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Fund Portfolio and/or the Tracking Basket or has access to nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto. In addition, proposed BZX Rule 14.11(m)(2)(F) provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity must erect and maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket. The proposed rules also require that the Exchange implement and maintain surveillance procedures. Finally, to ensure that the Exchange has the appropriate information to monitor and surveil its market, BZX Rule 14.11(m) requires that the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Fund Portfolio of each series of Tracking Fund Shares.[56]

For the reasons discussed above, the Commission finds that proposed BZX Rule 14.11(m) for Tracking Fund Shares is consistent with Section 6(b)(5) of the Act.

B. Listing and Trading of Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF

The Commission believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of certain pricing transparency cannot be assured. As such, the Commission believes the proposal is reasonably designed to maintain a fair and orderly market for trading the Shares. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Specifically, the Commission notes that the Exchange has obtained a representation from the issuer that the NAV per Share of each Fund will be calculated daily and that the NAV, Tracking Basket, and Fund Portfolio will be made available to all market participants at the same time.[57] Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line. Moreover, the Funds' website will include additional information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV, the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund holdings for the prior business day, and any information regarding the bid/ask spread for each Fund as may be required. The website and information will be publicly available at no charge.

In addition, the Exchange states that intraday pricing information for all constituents of the Tracking Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services, and that intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

The Commission also believes that the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices. Specifically, the Exchange provides that:

- The Adviser is not registered as a broker-dealer but is affiliated with numerous broker-dealers and has implemented and will maintain a ''fire wall'' between the respective personnel at the Adviser and affiliated broker-dealers with respect to access to information concerning the composition and/or changes to each Fund's portfolio and Tracking Basket;
- Personnel who make decisions on a Fund's portfolio composition and/or Tracking Basket or who have access to nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Tracking Basket;
- The Funds' Sub-Advisers are not registered as a broker-dealer but are affiliated with numerous broker-dealers, and Sub-Adviser personnel who make decisions regarding a Fund's Fund Portfolio and/or Tracking Basket or who have access to information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio and/or Tracking Basket;
- In the event that (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund Portfolio and/or Tracking Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information

[56] *See* proposed BZX Rule 14.11(m)(2)(D).

[57] *See* BZX Rule 14.11(m)(4)(A)(ii).

regarding such portfolio and/or Tracking Basket; and

• Any person or entity, including any service provider for the Funds, who has access to nonpublic information regarding a Fund Portfolio or Tracking Basket or changes thereto for a Fund or Funds will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or Tracking Basket or changes thereto, and any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer has erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket.

Finally, the Exchange represents that trading of the Shares on the Exchange will be subject to the Exchange's surveillance procedures for derivative products,[58] and that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Moreover, the Exchange will inform its members in an information circular of the special characteristics and risks associated with trading the Shares.

In support of this proposal, the Exchange represents that:

(1) The Shares will conform to the initial and continued listing criteria under BZX Rule 14.11(m).

(2) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

(3) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed with and may obtain trading information regarding trading in the Shares and the underlying exchange-traded instruments from other markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions in which the Shares trade.

(5) For initial and continued listing, each Fund will be in compliance with Rule 10A–3 under the Act.[59]

(6) Each Fund's holdings will conform to the permissible investments as set forth in the Application and Order, and the holdings will be consistent with all requirements set forth in the Application and Order. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

The Exchange represents that all statements and representations made in the filing regarding: (1) The description of the portfolio or reference assets; (2) limitations on portfolio holdings or reference assets; (3) dissemination and availability of reference asset; and (4) the applicability of Exchange rules constitute continued listing requirements for listing the Shares on the Exchange. In addition, the Exchange represents that the issuer will advise the Exchange of any failure by a Fund to comply with the continued listing requirements and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12.

IV. Solicitation of Comments on Amendment No. 5 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether the proposed rule change, as modified by Amendment No. 5, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–107 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–107. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–107, and should be submitted on or before June 11, 2020.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 5

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 5, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 5 in the **Federal Register**. In Amendment No. 5, the Exchange (a) revised the description of circumstances under which the Exchange will consider halting trading in a series of Tracking Fund Shares; (b) revised the description of information that shall be disclosed on the website for each series of Tracking Fund Shares; (c) removed the description of required prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940; (d) removed the description of the information circular provided by the Exchange; (e) represented that any foreign common

[58] *See* BZX Rule 14.11(m)(2)(D), which requires, as part of the surveillance procedures for Tracking Fund Shares, the Funds' investment adviser to, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Tracking Fund Shares.

[59] *See* 17 CFR 240.10A–3.

stock will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement; (f) described the sources of pricing information for components of the Tracking Basket; (g) represented that the website of each series of Tracking Fund Share would disclose the percentage weight overlap between the holdings of the Tracking Basket compared to a Fund's holdings for the prior business day; (h) noted that an issuer will comply with Regulation Fair Disclosure; and (i) represented that any person or entity, including any service provider for the Funds, who has access to nonpublic information regarding a Fund Portfolio or Tracking Basket or changes thereto for a Fund or Funds would be subject to procedures designed to prevent the use and dissemination of material nonpublic information, and that any such person or entity that is registered as a broker-dealer or affiliated with a broker dealer has erected and will maintain a ''fire wall'' between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket. Amendment No. 5 also provides other clarifications and additional information to the proposed rule change.[60] The changes and additional information in Amendment No. 5 assist the Commission in finding that the proposal is consistent with the Exchange Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[61] to approve the proposed rule change, as modified by Amendment No. 5, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[62] that the proposed rule change (SR–CboeBZX–2019–107), as modified by Amendment No. 5, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[63]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10932 Filed 5–20–20; 8:45 am]

BILLING CODE 8011–01–P

[60] *See* Amendment No. 4, *supra* note 11.

[61] 15 U.S.C. 78s(b)(2).

[62] *Id.*

[63] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88882; File No. SR–BOX–2020–10]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC (''BOX'') Facility To Amend Section I.D., Qualified Contingent Cross Transactions

May 15, 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, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule on the BOX Options Market LLC (''BOX'') facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to amend Section I.D., Qualified Contingent Cross (''QCC'')[5] Transactions. Currently, Professional Customers, Broker Dealers and Market Makers are assessed a $0.17 fee for their Agency Orders and a $0.17 fee for their Contra Orders for QCC transactions. Public Customers are not assessed a QCC Transaction Fee. The Exchange proposes to no longer assess Professional Customers QCC Transaction Fees.

The Exchange also proposes to amend the rebate for QCC Transactions. Currently, a $0.14 per contract rebate is applied to the Agency Order where at least one party to the QCC transaction is a Non-Public Customer. The Exchange now proposes to apply the $0.14 per contract rebate to the Agency Order where at least one party to the QCC Transaction is either a Broker Dealer or a Market Maker. The rebate will continue to be paid to the Participant that entered the order into the BOX system.

Lastly, the Exchange proposes to establish a $0.22 per contract rebate that will be applied to the Agency Order when both parties to the QCC Transaction are a Broker Dealer or Market Maker. The rebate will be paid to the Participant that entered the order into the BOX system. Further, if the Participant qualifies for both rebates, only the larger rebate will be applied to the QCC transaction.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that no longer assessing QCC transaction fees for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A QCC Order is an originating order (Agency Order) to buy or sell at least 1,000 standard option contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, coupled with a contra side order to buy or sell an equal number of contracts.

[6] 15 U.S.C. 78f(b)(4) and (5).

Professional Customers, thus permitting Professional Customer orders to be treated similar to Public Customer Orders with respect to the QCC order type, is reasonable. QCC Orders are an order to buy or sell at least 1,000 contracts, or 10,000 contracts in the case of Mini Options. These large-sized contingent orders are complex in nature and have a stock-tied component, which requires the option leg to be executed at the NBBO or better. The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (*i.e.,* the net price of the entire contingent trade), rather than on the absolute price of any single component.

The differentiation between a Public Customer and Professional Customer is not necessary with respect to QCC Orders because these orders are exempt from requirements regarding order exposure.[7] In addition, when the Exchange originally adopted fees for the QCC order type, the Exchange was largely focused on maintaining a market structure with features to benefit Public Customers.[8] This still holds true today, and the Exchange will continue to do this by charging no fees to Public Customers in QCC transactions. In the current proposal, the Exchange simply wishes to extend this benefit to an additional type of market participant, specifically Professional Customers.[9] The Exchange believes that charging no fees to Public Customers and Professional Customers is reasonable and, ultimately, will benefit all Participants trading on the Exchange by attracting additional order flow. Further, QCC Orders are not executed pursuant to a priority scheme.[10] As discussed herein, the Exchange believes that treating Public Customer orders and Professional Customer orders in a similar manner with respect to fees, when transacting QCC Orders, will attract more QCC Orders to the Exchange because there would be no fee for Professional Customer orders. Lastly, the Exchange notes that another options exchange assesses no fees to Professional Customers for their QCC transactions.[11]

The Exchange believes the proposed changes with respect to the QCC Rebate is reasonable, equitable and not unfairly discriminatory. The Exchange believes that applying the $0.14 per contract rebate to the Agency Order where at least one party to the QCC transaction is a Broker Dealer or Market Maker is reasonable as Professional Customers will no longer be assessed a fee for these transactions. The Exchange believes that Professional Customers no longer need the incentive of the rebate since the Exchange will no longer assess fees for their Agency Orders or Contra Orders for QCC transactions pursuant to this proposal. Further, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because it potentially applies to all Participants that enter the originating order (except for when both the agency order and contra-side orders are Public Customers or Professional Customers) and because it is intended to incentivize the sending of more QCC Orders to the Exchange. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to not provide a rebate for the originating order for QCC transactions when both the originating order and contra side orders are from Public Customers or Professional Customers, since Public Customers and Professional Customers are already incentivized by having no transaction fee for QCC Orders. The Exchange notes that another exchange in the industry does not apply rebates to these types of orders.[12]

Lastly, the Exchange believes the proposal to adopt the $0.22 per contract rebate applied to the Agency Order when both parties to the QCC transaction are a Broker Dealer and a Market Maker is reasonable, equitable and not unfairly discriminatory. The Exchange again notes that Public Customers are generally assessed a $0.00 transaction fee. Further, under this proposal, Professional Customers will no longer be assessed transaction fees for their QCC Orders. As discussed herein, Professional Customers do not need the incentive of the proposed rebate since there are no fees assessed for their Agency Orders or Contra Orders for QCC transactions. Further, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adopt the proposed QCC rebate for when both parties to the QCC transaction are a Broker Dealer or Market Maker, in order to increase competition and potentially attract different combinations of additional QCC order flow to the Exchange. Further, the Exchange notes that another exchange currently applies a similar rebate to QCC transactions.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The initial purpose of the distinction between a Public Customer order and a Professional Customer order was to prevent market professionals with access to sophisticated trading systems that contain functionality not available to retail customers, from taking advantage of Public Customer priority, where Public Customer orders are given execution priority over Non-Public Customer orders.

QCC Orders are by definition large-sized contingent orders which have a stock-tied component. The parties to a contingent trade are focused on the spread or ratio between the transaction prices for each of the component instruments (*i.e.,* the net price of the entire contingent trade), rather than on the absolute price of any single component. Treating Public Customer orders and Professional Customer orders in the same manner in terms of pricing

[7] *See* Rule 7110(c)(6).

[8] *See* SR–BOX–2017–24.

[9] The Exchange notes Professional Customers are not brokers or dealers in securities, their designation is derived from the higher number of orders placed in comparison to Public Customers.

[10] By way of comparison, Public Customers receive priority over other market participants with respect to the execution of their orders within the Exchange's order book or on the Floor.

[11] *See* Nasdaq Phlx LLC (''Phlx'') Fee Schedule Options 7 Pricing Schedule; Section 4 (''Customers and Professionals are not assessed a QCC Transaction Fee'').

[12] *See* Phlx Fee Schedule Options 7 Pricing Schedule; Section 4. On Phlx, QCC rebates will be applied for all qualifying executed QCC orders except where the transaction is either: (i) Customer-to-Customer; (ii) Customer-to-Professional; and (iii) Professional-to-Professional.

[13] *See* Miami International Securities Exchange LLC (''MIAX'') Fee Schedule. MIAX offers a $0.22 per contract rebate to Market Makers and Broker Dealers when their Contra Order is from a Non-Public Customer. The Exchange notes that under this proposal, Professional Customers will not be assessed fees for their QCC transactions (unlike MIAX who assesses a $0.15 and $0.17 fee for their Agency Orders and Contra Order, respectively). As such, the Exchange believes it is reasonable and appropriate to establish a similar rebate for these types of orders.

with respect to QCC Orders does not provide any advantage to a Professional Customer. The distinction does not create an opportunity to burden competition, for the reasons stated herein with respect to priority. Further, the Exchange notes that another Exchange in the options industry treats Public Customers and Professional Customers the same with regard to QCC transactions.[14]

Lastly, the Exchange believes that the proposed rebates will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it will encourage increased QCC order flow, which will bring greater volume and liquidity, thereby benefitting all market participants by providing more trading opportunities and tighter spreads.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[15] and Rule 19b–4(f)(2) thereunder,[16] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2020–10 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–BOX–2020–10. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2020–10, and should be submitted on or before June 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10927 Filed 5–20–20; 8:45 am]

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[14] *See supra* note 11.

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88885; File No. SR–NSCC–2020–003]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV

May 15, 2020.

On March 16, 2020, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2020–003 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on March 31, 2020.[3] The Commission has received four comment letters on the Proposed Rule Change.[4]

Section 19(b)(2) of the Act[5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 88474 (March 25, 2020), 85 FR 17910 (March 31, 2020) (SR–NSCC–2020–003) (''Notice''). NSCC also filed the proposal contained in the Proposed Rule Change as advance notice SR–FICC–2020–802 (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''). 12 U.S.C. 5465(e)(1); 17 CFR 240.19b–4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on April 15, 2020. Securities Exchange Act Release No. 88615 (April 9, 2020), 85 FR 21037 (April 15, 2020) (SR–NSCC–2020–802). The proposal contained in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

[4] Letter from Christopher R. Doubek, CEO, Alpine Securities Corporation (April 21, 2020); Letter from John Busacca, Founder, Securities Industry Professional Association (April 23, 2020); Letter from Charles F. Lek, Lek Securities Corporation (April 30, 2020); Letter from James C. Snow, President/CCO, Wilson-Davis & Co., Inc., all available at *https://www.sec.gov/comments/sr-nscc-2020-003/srnscc2020003.htm.*

[5] 15 U.S.C. 78s(b)(2).

proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the Proposed Rule Change is May 15, 2020.

The Commission is extending the 45-day time period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that it has sufficient time to consider and take action on the Proposed Rule Change.

Accordingly, pursuant to Section 19(b)(2) of the Act[6] and for the reasons stated above, the Commission designates June 29, 2020 as the date by which the Commission shall either approve, disapprove, or institute proceedings to disapprove proposed rule change SR–NSCC–2020–003.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10930 Filed 5–20–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88886; File No. SR–CBOE–2020–047]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5.24

May 15, 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 15, 2020, Cboe Exchange, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 5.24. The text of the proposed rule change is provided below.

(Additions are Italicized; Deletions are [Bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 5.24. Disaster Recovery

(a)–(d) No change.

(e) Loss of Trading Floor. If the Exchange 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 will operate using this configuration only until the Exchange's trading floor facility is operational. Open outcry trading will not be available in the event the trading floor becomes inoperable, except in accordance with paragraph (2) below and pursuant to Rule 5.26, as applicable.

(1) Applicable Rules. In the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable System Rules, except that open outcry Rules will not be in force, including but not limited to the Rules (or applicable portions of the Rules) in Chapter 5, Section G, and as follows (subparagraphs (A) through (E) will *be effective* until [May 15] *June 30,* 2020):

* * * * *

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.24 regarding the Exchange's business continuity and disaster recovery plans. Rule 5.24 describes which Trading Permit Holders (''TPHs'') are required to connect to the Exchange's backup systems as well as certain actions the Exchange may take as part of its business continuity plans so that it may maintain fair and orderly markets if unusual circumstances occurred that could impact the Exchange's ability to conduct business. This includes what actions the Exchange would take if its trading floor became inoperable. Specifically, Rule 5.24(e) states if the Exchange 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.[5]

Rule 5.24(e)(1) currently states in the event that the trading floor becomes inoperable, trading will be conducted pursuant to all applicable System Rules, except that open outcry Rules would not be in force, including but not limited to the Rules (or applicable portions) in Chapter 5, Section G,[6] and that all non-trading rules of the Exchange would continue to apply.[7] The Exchange recently adopted several rule changes that would apply during a time in which the trading floor in inoperable, which are effective until May 15, 2020.[8]

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Pursuant to Rule 5.26, the Exchange may enter into a back-up trading arrangement with another exchange, which could allow the Exchange to use the facilities of a back-up exchange to conduct trading of certain of its products. The Exchange currently has no back-up trading arrangement in place with another exchange.

[6] Chapter 5, Section G of the Exchange's rulebook sets forth the rules and procedures for manual order handling and open outcry trading on the Exchange.

[7] The proposed rule change updates subparagraph numbering throughout Rule 5.24(e)(1) to conform to numbering used throughout the Rules.

[8] *See* Securities Exchange Act Release Nos. 88386 (March 13, 2020), 85 FR 15823 (March 19, 2020) (SR–CBOE–2020–019); 88447 (March 20, 2020) (SR–CBOE–2020–023); 88490 (SR–CBOE–2020–026) (filed March 26, 2020); and SR–CBOE–2020–031 (filed March 31, 2020).

The Exchange believes these rules were necessary to implement to maintain a fair and orderly market while the trading floor was not operable in order to create an all-electronic trading environment similar to the otherwise unavailable open outcry trading environment.

As of March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of COVID–19 [9] and is currently operating in an all-electronic configuration. In accordance with federal and state health and safety guidelines, the Exchange intends to keep its trading floor closed and continue to operate in an all-electronic configuration until at least June 1, 2020. While an all-electronic trading environment cannot fully replicate open outcry trading, the Exchange continues to believes the recent amendments to Rule 5.24(e)(1) have allowed all-electronic trading to occur more similarly to open outcry trading.[10] To permit this all-electronic trading environment to continue in an interrupted manner given the continued closure of the Exchange's trading floor, the Exchange proposed to extend the effectiveness of the temporary Rules in Rule 5.24(e)(1) until June 30, 2020 (unless further extended).

The Exchange's Regulatory Division has continued, and will continue, its standard routine surveillance reviews for electronic trading, and has implemented, and will continue to apply, a regulatory plan to surveil the rules in place in Rule 5.24(e)(1) when operating in a screen-based only environment.

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.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest by permitting the current all-electronic trading environment to continue in an uninterrupted manner while the trading floor continues to be inoperable. The Exchange continues to believe the recent amendments to Rule 5.24(e)(1) have allowed all-electronic trading to occur more similarly to open outcry trading. The Exchange believes the proposed rule change is necessary and appropriate to provide continued execution opportunities in an all-electronic trading environment for orders that generally execute in open outcry trading.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended as a competitive filing, but rather extends the effectiveness of temporary rules as part of the Exchange's business continuity plans, which are intended to allow the Exchange to continue to maintain fair and orderly markets while the Exchange's trading floor continues to be inoperable.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to protect investors by permitting temporary rules that have been in place since the Exchange suspended open outcry trading on March 16, 2020 to remain in effect in an uninterrupted manner while the Exchange's trading floor remains inoperable. The Exchange believes extension of the temporary rules in place while the Exchange's trading floor is inoperable is reasonable given the uncertainty with respect to the ongoing COVID–19 pandemic. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the temporary rules to continue uninterrupted, thereby avoiding investor confusion that could result from an interruption in the effectiveness of the rules. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[9] On March 11, 2020, the World Health Organization characterized COVID–19 as a pandemic and to slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses.

[10] The Exchange continues to consider other enhancements to the all-electronic trading configuration that it believes may permit this configuration to further replicate the open outcry trading environment. The Exchange would submit separate rule filings for any such proposed enhancements.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2020–047 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–2020–047. 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–CBOE–2020–047 and should be submitted on or before June 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10931 Filed 5–20–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88889; File No. SR–BOX–2020–15]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC ("BOX") Facility To Remove the Pricing Changes That Were in Effect While the Trading Floor Was Inoperable

May 15, 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 12, 2020, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule on the BOX Options Market LLC (''BOX'') facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As a precautionary measure to prevent the potential spread of coronavirus (COVID–19), BOX Exchange LLC (BOX) temporarily closed the Trading Floor in Chicago after the close of business on Friday, March 20, 2020. As a result, BOX filed a fee change to govern certain pricing changes to be in effect while the BOX Trading Floor was inoperable.[5] On April 29, 2020, BOX announced that the BOX Trading Floor located in Chicago, Illinois will reopen on Monday, May 4, 2020. As such, BOX now proposes to remove the pricing changes that were in effect while the Trading Floor was inoperable. Specifically, the Exchange will remove the following language and corresponding chart from Section 1.C from Fee Schedule:

- ''Participants will be assessed the following fees for Facilitation and Solicitation Transactions in lieu of those described in the preceding table when the BOX Trading Floor is inoperable. The Facilitation and Solicitation Transaction Rebate identified in Section I.C.1 will not apply when the BOX Trading Floor is inoperable.''

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 88559 (April 3, 2020), 85 FR 19968 (April 9, 2020) (SR–BOX–2020–08).

Account type	Agency Order		Facilitation Order or Solicitation Order		Responses in the Solicitation or Facilitation Auction Mechanisms	
	Penny Pilot classes	Non-Penny Pilot classes	Penny Pilot classes	Non-Penny Pilot classes	Penny Pilot classes	Non-Penny Pilot classes
Public Customer	$0.00	$0.00	$0.00	$0.00	$0.50	$1.15
Professional Customer or Broker Dealer	0.00	0.00	0.00	0.00	0.50	1.15
Market Maker	0.00	0.00	0.00	0.00	0.50	1.15

In addition, the Exchange will remove the following language from Section III.B from the Fee Schedule:

• ''Participants will not be assessed Liquidity Fees and Credits for Facilitation and Solicitation Transactions when the BOX Trading Floor is inoperable.''

Lastly, the Exchange will remove the following language from Section IX. From the Fee Schedule:

• ''BOX Participant Fees will not be assessed for Trading Floor-only Participants and Trading Floor Permit Fees will not be assessed for any Participant while the BOX Trading Floor is inoperable.''

The Exchange notes that the previously effective fees and rebates that were in place prior to the Trading Floor closing will be in effect beginning May 4, 2020. Specifically, the following fees and rebates will be assessed for Facilitation and Solicitation Transactions:

Account type	Agency Order		Facilitation Order or Solicitation Order		Responses in the Solicitation or Facilitation Auction Mechanisms	
	Penny Pilot classes	Non-Penny Pilot classes	Penny Pilot classes	Non-Penny Pilot classes	Penny Pilot classes	Non-Penny Pilot classes
Public Customer	$0.00	$0.00	$0.00	$0.00	$0.25	$0.40
Professional Customer or Broker Dealer	0.00	0.00	0.15	0.15	0.25	0.40
Market Maker	0.00	0.00	0.15	0.15	0.25	0.40

A $0.10 per contract rebate will be applied to Agency Orders executed through the Facilitation and Solicitation Auction Mechanisms where at least one party is a Non-Public Customer.

In addition, the Liquidity Fees and Credits for Facilitation and Solicitation Transactions pursuant to Section III.B of the Fee Schedule will be as follows [6]:

	Fee for adding liquidity (all account types)	Credit for removing liquidity (all account types)
Non-Penny Pilot Classes	$0.75	($0.75)
Penny Pilot Classes	0.25	(0.25)

The Exchange will continue to assess Trading Floor-only Participants the following Participant fees under Section IX. of the Fee Schedule:

- Initiation Fee—$2,500 (one-time fee)
- Participant Fee—$1,500 per month
- Trading Floor Booth Space Fee—$1,500 per month

Lastly, the Exchange will continue to assess Trading Floor Permit Fees for all Participants, specifically:

- Floor Market Maker—$5,500 per month
- Floor Broker—$500 per month
- Badge Fee—$100 per month

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed changes to update the Fee Schedule to remove obsolete fees and references that were effective during the Trading Floor closure maintains clarity in the Fee Schedule and will alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system and protecting investors and the public interest. As noted above, the proposed filing seeks to remove pricing changes that were in effect while the Trading Floor was inoperable. Because the BOX Trading Floor will reopen beginning on May 4, 2020, the Exchange believes the proposed changes are appropriate and will reduce investor confusion. Lastly, the Exchange believes that the proposed change is reasonable, equitable and not unfairly discriminatory because BOX will reassess the fees and rebates that were effective prior to the Trading Floor closure.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes do not address competitive issues, but rather, as

[6] The Exchange notes, liquidity fees and credits are applied in addition to any applicable Electronic Transaction fees as described in Section I of the Fee Schedule.

[7] 15 U.S.C. 78f(b)(4) and (5).

discussed above, are intended to amend the Fee Schedule to remove obsolete text and references that were effective during the Trading Floor closure due to the reopening of the BOX Trading Floor, which will alleviate potential confusion. Lastly, the Exchange notes that BOX will assess the fees and rebates that were effective prior to the Trading Floor closure. The Exchange does not believe that assessing these previously effective fees and rebates will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [8] and Rule 19b–4(f)(2) thereunder,[9] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2020–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2020–15. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2020–15, and should be submitted on or before June 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88883; File No. SR–CBOE–2020–045]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

May 15, 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 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fees schedule in connection with the fees related to orders and auction responses executed in S&P 500 Index (''SPX'') and SPX Weekly (''SPXW'') options in the Automated Improvement Mechanism (''AIM'') Auction.

AIM includes functionality in which a Trading Permit Holder (''TPH'') (an ''Initiating TPH'') may electronically submit for execution an order it represents as agent on behalf of a customer,[3] broker dealer, or any other

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''customer'' means a Public Customer or a broker-dealer. The term ''Public Customer'' means a person that is not a broker-dealer. *See* Rule 1.1.

person or entity (''Agency Order'') against any other order it represents as agent, as well as against principal interest in AIM (an ''Initiating Order''), provided it submits the Agency Order for electronic execution into an AIM Auction.[4] The Exchange may designate any class of options traded on Cboe Options as eligible for AIM. The Exchange notes that all Users, other than the Initiating TPH, may submit responses to an Auction (''AIM Responses''). AIM Auctions take into account AIM Responses to the applicable Auction as well as contra interest resting on the Cboe Options Book at the conclusion of the Auction (''unrelated orders''), regardless of whether such unrelated orders were already present on the Book when the Agency Order was received by the Exchange or were received after the Exchange commenced the applicable Auction. If contracts remain from one or more unrelated orders at the time the Auction ends, they are considered for participation in the AIM order allocation process.

As of March 16, 2020, the Exchange suspended open outcry trading to help prevent the spread of the novel coronavirus and is currently operating in an all-electronic configuration. When the Exchange is operating in a hybrid environment with open outcry and electronic trading, the Exchange does not activate AIM in SPX and SPXW options. However, when the Exchange suspended open outcry trading, the Exchange activated AIM for SPX and SPXW options in an all-electronic environment to provide TPHs with a mechanism to execute crosses electronically, as they could no longer represent those crosses for open outcry execution. Footnote 12 in the Fees Schedule provides specifically that in the event the Exchange operates in a screen-based only environment, AIM may be available for SPX and SPXW during Regular Trading Hours. In light of the extended closure of the trading floor, the Exchange proposes to adopt new pricing changes and update a previous fee change that the Exchange believes is appropriate when the trading floor is inoperable for an extended period of time.

Specifically, the Exchange proposes to adopt an AIM Contra Surcharge of $0.10 per contract for AIM Contra orders, and an AIM Response Surcharge of $0.05 per contract for AIM Response orders, executed in SPX and SPXW and applicable to all market participants. The Exchange also proposes to amend footnote 12, which governs pricing changes in the event the Exchange trading floor becomes inoperable, to provide clarity in that the AIM Contra Surcharge and AIM Response Surcharge will apply to all SPX/SPXW AIM Contra and AIM Response/Priority Response orders, respectively, when the Exchange operates in a screen-based only environment.

The Exchange also proposes to amend the AIM Execution Surcharge Fee,[5] which also applies when the Exchange operates in a screen-based only environment to all market participant AIM Agency/Primary orders in SPX/SPXW,[6] from $0.05 per contract to $0.10 per contract.

As stated, since the trading floor has become inoperable, the only execution opportunities currently available for SPX and SPXW are electronic executions. The Exchange still wishes to encourage floor brokers to continue to conduct business on the Exchange, and, in order to approximate the trading floor environment electronically, the Exchange has activated AIM for SPX/SPXW, which historically have not been designated as eligible for AIM Auctions while the trading floor is operable. As such, the Exchange does not wish to discourage floor brokers from executing SPX and SPXW volume via AIM when the trading floor is inoperable, yet it also wishes to continue to assess fees for volume usually applicable to open-outcry trading, which volume has recently been moved to electronic channels. Due to the increased number of orders executed via AIM as a result of the transition of SPX and SPXW to an all-electronic trading environment, the proposed fees are designed to allow the Exchange to recoup the costs associated with implementing and maintaining AIM for SPX/SPXW while the trading floor remains inoperable.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[7] in general, and furthers the requirements of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that its proposed adoption of a surcharge for AIM Response and AIM Contra orders in SPX and SPXW, as well as amending the surcharge for AIM Agency/Primary executions is consistent with Section 6(b)(4) of the Act in that the proposal is reasonable, equitable and not unfairly discriminatory. The Exchange believes that it is reasonable to assess a surcharge of $0.05 for all AIM Responses, $0.10 for all AIM Contra orders, and $0.10 for all AIM Agency/Primary orders in SPX/SPXW while AIM is activated for SPX/SPXW in the current screen-based only environment because it is intended to recoup the costs associated with implementing and maintaining AIM for orders in SPX/SPXW. Indeed, the Exchange has experienced a significant increase in SPX/SPXW AIM orders since the activation of AIM in such classes, as the closure of the Exchange's trading floor essentially eliminated the sole mechanism by which TPHs could cross orders in SPX/SPXW.

The Exchange also believes that the proposed fees in connection with AIM Responses and AIM Contra, and AIM Agency/Primary orders are reasonable and equitable because they do not represent a significant departure from, or are less than, other surcharge fees provided by the Fees Schedule for executions in SPX and other index classes. For example, the current Fees Schedule provides for a surcharge of $0.25 exotic surcharge applicable to all Customer orders, as well as a $0.20 surcharge for Customer Maker, non-turner orders executed in VIX.[9] Additionally, the Exchange notes that, while the trading floor remains inoperable, it continues to assess an execution surcharge of $0.21 per contract for non-AIM, non-Market-Maker orders executed in SPX and an execution surcharge of $0.13 per contract for non-AIM, non-Market-Maker orders executed in SPXW.[10]

Finally, the Exchange believes that the proposed fees are equitable and not unfairly discriminatory because the proposed fees for AIM Responses and AIM Contra, as well as AIM Agency/Primary orders will apply equally to all market participants, *i.e.,* all TPHs will be assessed the same amount per qualifying order. In addition to this, the Exchange believes that adopting a lesser

[4] *See* Rule 5.37 (AIM); Rule 5.38 (Complex AIM); and Rule 5.73 (FLEX AIM).

[5] Currently, this fee is displayed in one line item as ''AIM and RFC Execution Surcharge''. In light of the proposed change only to the AIM Execution Surcharge, the proposed fee change updates this into two separate line items, ''AIM Agency/Primary Surcharge Fee'' and ''RFC Execution Surcharge Fee''. The Exchange also notes that it adds ''Agency/Primary'' to the title of the AIM Execution Surcharge Fee to add additional clarity as to which type of AIM orders the surcharge applies (as currently noted in footnote 12 of the Fees Schedule).

[6] *See* Cboe Options Fees Schedule, footnote 12.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] Applies to all such Customer orders in VIX with a premium of $1.00 or greater.

[10] *See* Cboe Options Fees Schedule, footnote 12.

surcharge for AIM Responses in SPX/SPXW is equitable and not unfairly discriminatory as it is designed to encourage more Responses in AIM while it is activated in SPX thereby increasing the opportunities for price improvement for all orders executed during the AIM Auction. The Exchange believes that increased opportunities for price improvement through the AIM Auctions would, in turn, facilitate a potential increase in SPX liquidity through the AIM Auctions, which would benefit all participants in the market, particularly while the trading floor remains inoperable.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes the proposed changes are not intended to address any competitive issue, but rather to address fee changes it believes are reasonable now that the trading floor is currently 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 in the same manner to all market participants submitting qualifying orders (*i.e.,* AIM Responses and AIM Contra, as well as AIM Agency/Primary orders) in SPX/SPXW. In addition to this, and as stated above, the Exchange does not believe the proposed rule change to adopt a lesser fee for AIM Responses in SPX/SPXW will impose any burden on intramarket competition because it is designed to encourage AIM Responses in SPX/SPXW. A high level of AIM Responses would increase the opportunities for price improvement during the AIM Auctions, in turn, potentially attracting further liquidity to the AIM Auctions in SPX/SPXW to the benefit of all market participants. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because SPX and SPXW options are proprietary products that are only traded on Cboe Options and, in addition to this, 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 [11] and paragraph (f) of Rule 19b–4 [12] 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–2020–045 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–2020–045. 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–CBOE–2020–045 and should be submitted on or before June 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10928 Filed 5–20–20; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88881; File No. SR–NYSECHX–2020–16]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Relief Granted to Institutional Brokers to Report Non-Tape, Clearing-Only Submissions Into the Exchange's Systems to June 30, 2020 (or Earlier)

May 15, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 14, 2020, the NYSE Chicago, Inc. (''NYSE Chicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 extend the temporary relief granted to Institutional Brokers to report non-tape, clearing-only submissions into the Exchange's systems pursuant to Article 21, Rule 6(a)(3). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to a filing submitted by the Exchange,[4] for a temporary period that began on April 20, 2020 and ends on the earlier of the reopening of all the options trading floors or after the end of the day on May 15, 2020, the Exchange has extended the time within which Institutional Brokers [5] are required to report non-tape, clearing-only submissions into the Exchange's systems pursuant to Article 21, Rule 6(a)(3). The Exchange provided this temporary relief due to changes in work flow in the post-trade processing of transactions in the cash equity leg of stock-option orders that are a consequence of the precautionary measures to prevent the spread of COVID–19 taken by options exchanges and their members and by Institutional Brokers.

Given that the majority of the options trading floors continue to remain closed,[6] the Exchange is proposing to extend the relief granted in the Temporary Relief Filing until the remaining options floors reopen or after the end of the day on June 30, 2020. As represented in the Temporary Relief Filing, the proposed rule change would have no impact on trade reporting or clearing of trades, as all trades would have already been reported to the Consolidated Tape in accordance with applicable trade reporting rules of the Trade Reporting Facility (''TRF'') and submitted to the Deposit Trust Clearing Corporation (''DTCC'') for clearing. The Exchange is not proposing any other change to the application of Article 21, Rule 6(a)(3), other than to extend the effectiveness of the temporary relief granted in the Temporary Relief Filing.

Accordingly, the Exchange proposes that until the earlier of the reopening of all the options trading floors or after the end of the day on June 30, 2020, Institutional Brokers may enter non-tape, clearing-only submissions into Brokerplex [7] for non-Exchange transaction by 8:00 p.m. ET of the day of the trade, rather than within three hours as required under the rule. To reflect this change, the Exchange proposes amend Commentary .05 to Article 21, Rule 6 that sets forth the proposed rule text that would replace Article 21, Rule 6(a)(3) during a temporary period that began on April 20, 2020, and ends on the earlier of the reopening of all the options trading floors or after the end of the day on June 30, 2020. The Exchange believes that this temporary relief will permit Institutional Brokers to comply with the reporting requirements in Article 21, Rule 6(a) during a period when their staff and staff of options floor traders are working from home and completing such tasks within three hours is less straightforward and more complex.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general to protect investors and the public interest. As a result of uncertainty related to the ongoing spread of the COVID–19 virus, three major options trading floors temporarily remain closed. In addition, social-distancing measures have been implemented throughout the country to reduce the spread of COVID–19, resulting in staff of options floor traders and Institutional Brokers working from home.

The proposed rule change would allow the Exchange to temporarily extend the time by which Institutional Brokers would be required to report non-tape, clearing-only submissions into the Exchange's systems for a given non-Exchange transaction to 8:00 p.m. ET of the day on which the execution of such transaction occurred rather than within three (3) hours of the execution of such transaction. The Exchange believes that this temporary relief is necessary and appropriate in the public interest, and is consistent with the protection of investors, given the changes to workflow that increase the time it takes for Institutional Brokers to obtain complete information about counterparties for such trades during a period when options trading floors are closed and both options floor traders and Institutional Brokers are working from home as precautionary measures to protect the health and safety of their employees and to prevent the spread of COVID–19. In particular, this proposed rule change would have no impact on trade reporting or clearing of trades, as all trades would be reported to the Consolidated Tape in accordance with applicable trade reporting rules of the TRF and submitted to DTCC for clearing in a timely manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to extend the time of the temporary relief provided to Institutional Brokers that are required to comply with Article 21, Rule 6(a)(3) during a temporary period when the options trading floors are closed and staff of options floor traders and Institutional Brokers are working from home.

[4] *See* Securities Exchange Act Release No. 88714 (April 21, 2020), 85 FR 23384 (April 27, 2020) (SR–NYSECHX–2020–11) (''Temporary Relief Filing'')

[5] The term ''Institutional Broker'' is defined in Article 1, Rule 1(n) to mean a member of the Exchange who is registered as an Institutional Broker pursuant to the provisions of Article 17 and has satisfied all Exchange requirements to operate as an Institutional Broker on the Exchange. There are currently five Institutional Brokers on the Exchange.

[6] On April 28, 2020, NYSE Arca Options announced the partial reopening of its trading floor. *See https://www.nyse.com/trader-update/history#110000241246. See also https://www.nyse.com/publicdocs/nyse/markets/arca-options/rule-interpretations/2020/Arca%20RB-20-02%20-%204.28.20%20-%20Final.pdf.*

[7] Brokerplex is an order entry, management and recordation system provided by the Exchange for use by Institutional Brokers. *See* Article 17, Rule 5.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposal would extend the temporary relief granted by the Exchange to provide additional time to institutional brokers to report certain transactions while the options trading floors are closed and market participants' staff are working from home. The Commission notes that the proposal extends the temporary measure designed to respond to current, unprecedented market conditions. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSECHX–2020–16 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–NYSECHX–2020–16. 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–NYSECHX–2020–16, and should be submitted on or before June 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10926 Filed 5–20–20; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12) and (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88888; File No. SR–CboeBZX–2020–029]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the JPMorgan Large Cap Growth ETF Under BZX Rule 14.11(k), Managed Portfolio Shares

May 15, 2020.

On March 25, 2020, Cboe BZX Exchange, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the JPMorgan Large Cap Growth ETF under Rule 14.11(k), Managed Portfolio Shares. The proposed rule change was published for comment in the **Federal Register** on April 9, 2020.[3] On April 29, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88551 (April 3, 2020), 85 FR 19971.

[4] Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-cboebzx-2020-029/srcboebzx2020029-7135317-216172.pdf.*

Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 24, 2020. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates July 8, 2020, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File Number SR-CboeBZX-2020-029).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10933 Filed 5–20–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88891; File No. SR–NYSE–2020–45]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C

May 15, 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 15, 2020, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C to end on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 22, 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 modify the temporary period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C to end on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 22, 2020. The current temporary period that these Rules are in effect ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020.

To slow the spread of COVID–19 through social-distancing measures, on March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.[4] Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

For the period while the Trading Floor is temporarily closed, the Exchange has modified the rules governing Auctions to add the following Commentaries that are in effect until the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020:

- Commentary .01 to Rule 7.35C; [5]
- Commentary .01 to Rule 7.35A; Commentary .01 to Rule 7.35B; and Commentary .02 to Rule 7.35C; [6]
- Commentary .02 to Rule 7.35A; [7]
- Commentary .03 to Rule 7.35A; [8]
- Commentary .03 to Rule 7.35C; [9]
- Commentary .04 to Rule 7.35A; [10]
- Commentary .01 to Rule 7.35; [11] and
- Commentary .02 to Rule 7.35B. [12]

The Exchange proposes to amend the above-listed Commentaries to extend the end date of such temporary rules to May 22, 2020, which is the last day when the Trading Floor facilities will be fully closed. With this proposed extension, such Commentaries would be in effect until the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 22, 2020. The Exchange is not proposing any substantive changes to these Rules.

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange's current rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. *See* Press Release, dated March 18, 2020, available here: *https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110.*

[5] *See* Securities Exchange Act Release No. 88413 (March 18, 2020), 85 FR 16713 (March 24, 2020) (SR–NYSE–2020–19).

[6] *See* Securities Exchange Act Release No. 88444 (March 20, 2020), 85 FR 17141 (March 26, 2020) (SR–NYSE–2020–22).

[7] *See* Securities Exchange Act Release No. 88488 (March 26, 2020), 85 FR 18286 (April 1, 2020) (SR–NYSE–2020–23).

[8] *See* Securities Exchange Act Release No. 88546 (April 2, 2020), 85 FR 19782 (April 8, 2020) (SR–NYSE–2020–28).

[9] *See* Securities Exchange Act Release No. 88562 (April 3, 2020), 85 FR 20002 (April 9, 2020) (SR–NYSE–2020–29).

[10] *See* Securities Exchange Act Release No. 88705 (April 21, 2020), 85 FR 23413 (April 27, 2020) (SR–NYSE–2020–35).

[11] *See* Securities Exchange Act Release No. 88725 (April 22, 2020), 85 FR 23583 (April 28, 2020) (SR–NYSE–2020–37).

[12] *See* Securities Exchange Act Release No. 88829 (May 6, 2020), 85 FR 28115 (May 12, 2020) (SR–NYSE–2020–41). The rule text filed with this proposed rule change unintentionally changed the end date of Commentary .01 to Rule 7.35B to May 29, 2020 instead of May 15, 2020. With this proposed rule change, the end date for all Commentaries will be the same.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Due to social-distancing measures implemented throughout the country, including in New York City, to reduce the spread of COVID–19, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange will remain temporarily closed past May 15, 2020. Accordingly, the Exchange believes that the temporary rule changes in effect pursuant to the Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C, which are intended to be in effect during the temporary period while the Trading Floor is closed to prevent the spread of COVID–19. The Exchange is not proposing any substantive changes to these Rules.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of the reopening of the Trading Floor facilities or the close of the Exchange on May 22, 2020, market participants will have advance notice of the temporary period during which the Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C will be in effect.

B. Self-Regulatory Organization's Statement on Burden on Competition

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. The proposed rule change is not designed to address any competitive issues but rather would extend the period during which Commentary .01 to Rule 7.35; Commentaries .01, .02, .03, and .04 to Rule 7.35A; Commentaries .01 and .02 to Rule 7.35B; and Commentaries .01, .02, and .03 to Rule 7.35C will be in effect. These Commentaries are intended to be in effect during the temporary period while the Trading Floor is closed and currently expire on May 15, 2020. Because the Trading Floor will remain fully closed until May 22, 2020, the Exchange proposes to extend the temporary period to be the earlier of earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 22, 2020.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6) [19] normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[20] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposal would extend the period during which Commentary .01 to Rule 7.35; Commentaries .01, .02, .03, and .04 to Rule 7.35A; Commentaries .01 and .02 to Rule 7.35B; and Commentaries .01, .02, and .03 to Rule 7.35C will be in effect for one more week, until May 22, 2020, without any substantive changes to these Commentaries. The Exchange has represented that these Commentaries are intended to be in effect during the temporary period while the Trading Floor is closed, and would currently expire on May 15, 2020. The Exchange also has represented that the Trading Floor will now remain fully closed until May 22, 2020. The Commission notes that, without a waiver of the operative delay, the Commentaries would cease to apply while the Exchange's Trading Floor facilities are still closed. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2020–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–45, and should be submitted on or before June 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10935 Filed 5–20–20; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88884/May 15, 2020]

Order Granting a Conditional Exemption From Exchange Act Section 11(d)(1) for Certain Asset Backed Securities and Other Collateral

The Securities and Exchange Commission (''Commission'' or ''SEC'') is issuing an order granting an exemption from compliance with Section 11(d)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') pertaining to certain lending transactions in asset backed securities.

I. Introduction

By letter dated May 12, 2020 (the ''Letter''),[1] the Federal Reserve Bank of New York (''New York Fed''), has requested that the Commission grant exemptive relief from Section 11(d)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') to permit all brokers and dealers registered with the Commission and designated by the New York Fed as ''TALF Agents'' (''TALF Agents'') to participate in the Federal Reserve's 2020 Term Asset-Backed Securities Loan Facility (''TALF 2020'') by facilitating extensions of non-recourse credit, on behalf of a special purpose vehicle (the ''TALF SPV'') established by the New York Fed, to purchasers of new issues of asset-backed securities (''ABS'') that are or that may be designated as ''eligible collateral'' in the distribution of which such TALF Agents may have participated as member of a selling syndicate or group within the meaning of Section 11(d)(l).

II. Discussion

Section 11(d)(1) of the Exchange Act generally prohibits a person that is both a broker and a dealer from extending or maintaining credit, or arranging for the extension or maintenance of credit, to or for a customer on any security (other than an exempted security) that was part of a distribution of a new issue of securities in which the broker-dealer participated as a member of a selling syndicate or group within thirty days prior to such transaction.

The TALF 2020 is intended to support the provision of credit to consumers and businesses by enabling the issuance of ABS backed by private student loans, auto loans and leases, consumer and corporate credit card receivables, equipment loans and leases, floorplan loans, insurance premium finance loans, certain small business loans guaranteed by the Small Business Administration, and leveraged loans.[2] TALF Agents will act as agents of borrowers in, among other things, making applications for TALF loans. TALF Agents will also (i) assess the eligibility of prospective borrowers and collateral, (ii) receive that portion of the interest and principal distributions on the collateral that is for the account of the borrowers, and (iii) disburse such interest and principal to the borrowers. TALF Agents will also perform certain recordkeeping functions. In addition, all payments in respect of interest and principal on the underlying collateral that are to be paid to a borrower shall be paid by the custodian to such borrower's TALF Agent, for further distribution to that borrower. The function of the TALF Agents is necessary to the success of the TALF 2020 because the New York Fed and the TALF SPV lack the resources to perform these functions themselves.

The Commission understands, based on the New York Fed statements, that the success of the TALF 2020 program depends on the effective participation of TALF Agents in facilitating the availability of the program to potential participants, and furthermore that the success of the TALF 2020 program is important to the United States Government's efforts to restore the availability of credit in the national economy. The relief is consistent with investor protection because the TALF 2020 loans are non-recourse to the borrower, absent a breach of representation or other enforcement event under the facility documentation, and therefore neither the TALF SPV nor the New York Fed may proceed against the borrower for collection of the loan balance, irrespective of the market value or performance of the underlying collateral. Furthermore, natural persons do not qualify as participants under the TALF 2020 program. The Commission agrees that granting the requested relief is consistent with its tripartite mission.

III. Conclusion

In light of the above, and in accordance with Section 36 of the Exchange Act, the Commission finds that exempting brokers and dealers that are designated by the New York Fed as TALF Agents and that participate in TALF 2020 from the requirements of Section 11(d)(1) of the Exchange Act with respect to ABS that are or that may be designated as ''eligible collateral'' is necessary and appropriate in the public interest, and consistent with the mission of the Commission, including the protection of investors.[3]

[1] Letter from Michael Held, General Counsel and Executive Vice President, Federal Reserve Bank of New York to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated May 12, 2020. Each defined term in this order has the same meaning as defined in the Letter, unless otherwise noted.

[2] Certain legacy commercial mortgage-backed securities are also eligible ABS. The set of permissible underlying assets of eligible ABS may be expanded later to other asset classes.

[3] Exchange Act Section 36 [15 U.S.C. 78mm]. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt, by rule, regulation, or order any person, security, or transaction (or any class or classes of persons, securities, or transactions) from any provision of the Exchange Act or any rule or regulation thereunder, to the extent such exemption

Continued

It is hereby ordered, pursuant to its authority under Section 36 of the Exchange Act, based on the representations and facts presented in the Letter, that any broker-dealer that is designated as a TALF Agent and that participates in TALF 2020 by facilitating extensions of non-recourse credit, on behalf of the TALF SPV, to a purchaser of new issues of securities is exempt from the prohibition on arranging certain credit contained in Section 11(d)(1) with respect to ABS securities that are or that may be designated as designated as ''eligible collateral.''

This exemption from Section 11(d)(1) of the Exchange Act applies solely to such TALF Agent's facilitation of extensions and maintenance of credit by the New York Fed pursuant to the TALF 2020 with respect to ABS that are or that may be designated as ''eligible collateral,'' and not to any other extension or maintenance of credit, or any other arranging for the extension or maintenance of credit, on new issues of securities in the distribution of which such TALF Agent participated as a member of a selling syndicate or group within the meaning of Section 11(d)(1) of the Exchange Act.

This order should not be considered a view with respect to any other question that participation in TALF 2020 program may raise, including, but not limited to the applicability of other federal or state laws to such participation.

For the Commission, by the Division of Trading and Markets pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–10929 Filed 5–20–20; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

60-Day Notice of Intent To Seek Extension of Approval: Complaints

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the collection of Complaints, as described below.

DATES: Comments on this information collection should be submitted by July 20, 2020.

ADDRESSES: Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Complaints.'' For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance, at (202) 245–0284 or at *Michael.Higgins@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Complaints under 49 CFR 1111.

OMB Control Number: 2140–0029.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Affected shippers, railroads and communities that seek redress for alleged violations related to unreasonable rates, unreasonable practices, service issues, and other statutory claims.

Number of Respondents: Four.

Estimated Time per Response: 467 hours.

Frequency: On occasion. For years 2017–2019, respondents filed an average of four complaints of this type with the Board.

Total Burden Hours (annually including all respondents): 1,876 (estimated hours per complaint (467) × average number of complaints (4)).

Total ''Non-hour Burden'' Cost: $5,848 (estimated non-hour burden cost per complaint ($1,462) × average number of complaints (4)).

Needs and Uses: Under the Board's regulations, persons may file complaints before the Board pursuant to 49 CFR part 1111 seeking redress for alleged violations of provisions of the Interstate Commerce Act, 49 U.S.C. 10101 *et seq.* The required content of a complaint is outlined at 49 CFR 1111.1(a). Generally, the most significant complaints filed at the Board allege that railroads are charging unreasonable rates or that they are engaging in unreasonable practices. The collection by the Board of these complaints, and the agency's action in conducting proceedings and ruling on the complaints, enables the Board to meet its statutory duty to regulate the rail industry.

In two notices of proposed rulemakings, *Final Offer Rate Review,* EP 755 et al. (84 FR 48872 (Sept. 17, 2019)); and *Market Dominance Streamlined Approach,* EP 756 (84 FR 48882 (Sept. 17, 2019)), the Board is proposing new rules that are intended to simplify and streamline certain complaint proceedings. The Board has submitted to OMB an interim request for modification and extension of the existing collection and has received comments, which it is reviewing. The Board will submit its requests for modification of this collection once the final rules are decided.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: May 18, 2020.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2020–11002 Filed 5–20–20; 8:45 am]

BILLING CODE 4915–01–P

is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[4] 17 CFR 200.30–3(a)(62).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0244]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Lytx Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant the Lytx Inc. (Lytx) application for a limited five-year exemption to allow its advanced driver-assistance systems (ADAS) to be mounted lower in the windshield on commercial motor vehicles (CMV) than is currently permitted. The Agency has determined that lower placement of the ADAS would not have an adverse impact on safety and that adherence to the terms and conditions of the exemption would achieve a level of safety equivalent to, or greater than, the level of safety provided by the regulation.

DATES: This exemption is effective May 21, 2020 and ending May 18, 2025.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online Federal document management system is available 24 hours a day, 365 days a year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Lytx's Application for Exemption

Lytx applied for an exemption from 49 CFR 393.60(e)(1) to allow its ADAS to be mounted lower in the windshield than is currently permitted by the Agency's regulations in order to utilize a mounting location that allows optimal functionality of the camera system. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.60(e)(1)(i) of the FMCSRs prohibits obstruction of the driver's field of view by devices mounted at the top of the windshield. Antennas and similar devices must not be mounted more than 152 mm (6 inches) below the upper edge of the windshield, and must be outside the driver's sight lines to the road and highway signs and signals. However, § 393.60(e)(1)(i) does not apply to vehicle safety technologies, as defined in § 390.5, that include ''a fleet-related incident management system, performance or behavior management system, speed management system, forward collision warning or mitigation system, active cruise control system, and transponder.'' Section 393.60(e)(1)(ii) requires devices with vehicle safety technologies to be mounted (1) not more than 100 mm (4 inches) below the upper edge of the area swept by the windshield wipers, or (2) not more than 175 mm (7 inches) above the lower edge of the area swept by the windshield wipers, and (3) outside the driver's sight lines to the road and highway signs and signals.

In its application, Lytx states that it has expanded the functionality of its camera systems to include ADAS capabilities through its ''Machine Vision & Artificial Intelligence'' (MV+AI) platform. These capabilities now include the ability to provide forward collision warnings, following distance warnings, and lane departure warnings along with detection of stop signs and use of cell phones, seat belts, food and drink, smoking, etc. Lytx states that the proposed exemption will increase safety by providing these ADAS features on its clients' CMVs. Lytx notes that it piloted the devices' functionality, and found that there was no noticeable obstruction to the driver's normal sightlines to the road ahead, highway signs and, signals, or any mirrors.

The camera housing is approximately 127 mm (5 inches) wide by 108 mm (4.2 inches) tall, and will be mounted in the approximate center of the top of the windshield such that the bottom edge of the camera housing is approximately 204 mm (8 inches) below the upper edge of the windshield wipers, outside of the driver's and passenger's normal sight lines to the road ahead, highway signs and signals, and all mirrors. This location will allow for proper installation (including connectors and cables) for optimal functionality of the advanced safety systems supported by the camera.

Without the proposed exemption, Lytx states that its clients (1) will not be able to install these devices in an optimal location on the windshield to maximize the effectiveness of the ADAS safety features of the technology, and (2) could be fined for violating current regulations. The exemption would apply to all CMVs equipped with Lytx's ADAS mounted on the windshield. Lytx believes that mounting the system as described will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

Comments

FMCSA published a notice of the application in the **Federal Register** on December 3, 2019, and asked for public comment (84 FR 66271).

The Agency received three comments, from the American Trucking Associations, the National Waste & Recycling Association, and the International Foodservice Distributors Association. Each organization supported the Lytx exemption application, and noted that granting it would (1) allow for increased use of the ADAS technologies in CMVs, (2) improve safety, and (3) be consistent with previous FMCSA actions granting exemptions for similarly-sized devices.

FMCSA Decision

FMCSA has evaluated the Lytx exemption application. The ADAS camera system housing is approximately 4.2 inches tall, and is mounted near the top of the center of the windshield, with the bottom of the camera housing located approximately 8 inches below the top of the area swept by the windshield wipers. The camera needs to be mounted in this location for optimal functionality of the ADAS system. The size of the camera system precludes mounting it (1) higher in the windshield, and (2) within 4 inches from the top of the area swept by the windshield wipers to comply with § 393.60(e)(1)(ii)(A).

The Agency believes that granting the temporary exemption to allow placement of the ADAS lower than currently permitted by Agency regulations will provide a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption because (1) based on the technical information available, there is no indication that the ADAS would obstruct drivers' views of the roadway, highway signs and signals surrounding traffic; (2) generally, trucks and buses have an elevated seating position that greatly improves the forward visual field of the driver, and any impairment of available sight lines would be minimal; and (3) the mounting location 8 inches below the upper edge of the windshield and out of the driver's normal sightline will be reasonable and enforceable at roadside. In addition, the Agency believes that use of ADAS by fleets is likely to improve the overall level of safety for the motoring public.

This action is consistent with previous Agency action permitting the placement of similarly-sized devices on CMVs outside the driver's sight lines to the road, and highway signs and signals. FMCSA is not aware of any evidence showing that installation of other vehicle safety technologies mounted on the interior of the windshield has resulted in any degradation in safety.

Terms and Conditions for the Exemption

The Agency hereby grants the exemption for a 5-year period, beginning May 21, 2020 and ending May 18, 2025. During the temporary exemption period, motor carriers will be allowed to operate CMVs equipped with Lytx's ADAS in the approximate center of the top of the windshield and such that the bottom edge of the camera housing is approximately 8 inches below the upper edge of the windshield, outside of the driver's and passenger's normal sight lines to the road ahead, highway signs and signals, and all mirrors. The exemption will be valid for 5 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) Motor carriers and/or commercial motor vehicles fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Interested parties possessing information that would demonstrate that motor carriers operating CMVs equipped with Lytx's ADAS are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any such information and, if safety is being compromised or if continuation of the exemption is not consistent with 49 U.S.C. 31136(e) and 31315(b), will take immediate steps to revoke the exemption.

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no state shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

James A. Mullen,

Acting Administrator.

[FR Doc. 2020–10971 Filed 5–20–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice To Rescind Notice of Intent To Prepare a Supplemental Draft Environmental Impact Statement for the Proposed Transit Improvements in the Eastside Transit Corridor Phase 2, Eastern Portion of Los Angeles County, California

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Rescind Notice of Intent to prepare a Supplemental Draft Environmental Impact Statement.

SUMMARY: The FTA in cooperation with the Los Angeles County Metropolitan Transportation Authority (LACMTA) is issuing this notice to advise the public that the Notice of Intent (NOI) to prepare a Supplemental Draft Environmental Impact Statement (EIS) for the proposed Eastside Transit Corridor Phase 2 Project in eastern Los Angeles County, California is being rescinded.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Nguyen, Environmental Protection Specialist, Federal Transit, Administration Region 9, Los Angeles Office, 888 South Figueroa Street, Suite 440, Los Angeles, CA 90017–5467, Phone (213) 202–3960, email *mary.nguyen@dot.gov.*

SUPPLEMENTARY INFORMATION: The FTA, as lead federal agency, and LACMTA published an NOI on May 29, 2019 (80 FR 24857) to prepare a Supplemental Draft EIS for the LACMTA Eastside Transit Corridor Phase 2 Project. The Project would extend the existing Metro (Gold) Line from its current terminus at Atlantic Station in the unincorporated area of East Los Angeles to eastern Los Angeles County to South El Monte via the State Route 60 freeway alignment, to Whittier along the Washington Boulevard alignment, or to both South El Monte and Whittier with the Combined Alternative. The Project would traverse densely populated, low-income, and heavily transit-dependent communities with major activity centers within the Gateway Cities and San Gabriel Valley subregions of Los Angeles County. Following the publication of the NOI, LACMTA reevaluated its funding sources and has identified that the Project can be funded through state and local sources. Thus, LACMTA is not seeking federal funding from FTA at this time, and FTA is rescinding the May 29, 2019 NOI. LACMTA Board of Directors took action at its February 27, 2020 Board meeting to proceed with the California Environmental Quality Act (CEQA) only for the Project's environmental study. Comments and questions concerning the proposed action should be directed to FTA at the address provided above.

Raymond Tellis,

Regional Administrator, FTA Region 9.

[FR Doc. 2020–10918 Filed 5–20–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0125; Notice 1]

Mercedes-Benz USA, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Mercedes-Benz AG (''MB AG'') and Mercedes-Benz USA, LLC (''MBUSA'') (collectively, ''Mercedes-Benz''), formerly known as Daimler AG has determined that certain model year (MY) 2019 Mercedes-Benz AMG GT motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 201, *Occupant Protection in Interior Impact.* Mercedes-Benz filed a noncompliance report dated October 18, 2019, and subsequently petitioned NHTSA on November 7, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Mercedes-Benz's petition.

DATES: Send comments on or before June 22, 2020.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: Mercedes-Benz has determined that certain MY 2019 Mercedes-Benz AMG GT motor vehicles do not fully comply with paragraph S5.3.1(c) of FMVSS No. 201, *Occupant Protection in Interior Impact* (49 CFR 571.201).

Mercedes-Benz filed a noncompliance report dated October 18, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* and subsequently petitioned NHTSA on November 7, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of the Mercedes-Benz's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Approximately 12 MY 2019 Mercedes-Benz GT63, GT53, and GT63S AMG motor vehicles, manufactured between August 29, 2017, and March 4, 2019, are potentially involved.

III. Noncompliance: Mercedes-Benz explains that an interior compartment door assembly in the subject vehicles, does not meet the requirements of paragraph S5.3.1(c) of FMVSS No. 201. Specifically, the front center console storage compartment sliding lid may open briefly in certain types of forward crashes.

IV. Rule Requirements: Paragraphs S5.3, S5.3.1(a) and S5.3.1(c) of FMVSS No. 201, include the requirements relevant to this petition. Each interior compartment door assembly located in an instrument panel, console assembly, seat back, or side panel adjacent to a designated seating position shall remain closed when tested in accordance with either S5.3.1(a) and S5.3.1(b) or S5.3.1(a) and S5.3.1(c). S5.3.1(a) subjects the interior compartment door latch system to an inertia load of 10g in a horizontal transverse direction and an inertia load of 10g in a vertical direction in accordance with the procedure described in section 5 of SAE Recommended Practice J839b (1965) (incorporated by reference, see § 571.5), or an approved equivalent. Further, S5.3.1(c) subjects the interior compartment door latch system to a horizontal inertia load of 30g in a longitudinal direction in accordance with the procedure described in section 5 of SAE Recommended Practice J839b (1965) (incorporated by reference, see § 571.5), or an approved equivalent.

V. Summary of Mercedes-Benz's Petition: The following views and arguments presented in this section, V. Summary of Mercedes-Benz's petition, are the views and arguments provided by Mercedes-Benz. They have not been evaluated by the Agency and do not reflect the views of the Agency. Mercedes-Benz described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

Background: Prior to the introduction of the MY 2019 AMG GT vehicles to the United States market, MB AG found that the lid of the front center console could open for a matter of milliseconds and that the supplier of the compartment had tested the locking mechanism of the door with 24g of force, instead of the 30g force requirement contained in subparagraph (c). The crash lock was updated in production, prior to

introduction to the U.S. market, to ensure conformance to the force requirements in subparagraph (c) and vehicles in the company's possession were reworked.[1] MB AG later identified 12 vehicles that had not received the improved crash lock mechanism prior to being released into the field and made a determination to submit a Part 573 Noncompliance Information Report on October 11, 2019. In support of its petition, Mercedes-Benz submitted the following reasoning:

1. At issue in this petition are a total of 12 MY 2019 Mercedes-Benz AMG GT vehicles. MB AG previously determined that the interior compartment door located within the vehicle's center console does not fully meet the requirement in FMVSS No. 201, *Occupant Protection in Interior Impact,* when tested to the demonstration procedure for frontal crash set forth in the standard. In a frontal crash scenario, there is a possibility for the lid of the interior compartment door in the center console to open for a matter of milliseconds, after which the door will automatically close again.

2. Mercedes-Benz says that due to the location and geometry of the compartment door, there is no risk of injury even if it were to open in a frontal crash. Mercedes-Benz stated that the door is located in the center console, below the in-vehicle display, and does not present an opportunity to strike vehicle occupants when opened. Further, because the design of the door slides forward and into the center console when it opens, there is similarly no risk of injury from the performance of the door. Finally, although the purpose and objective of the standard is to protect against injury from hard and sharp surfaces in the event of a crash, because the compartment door will automatically close within an extremely short period of time (a matter of milliseconds) from opening and because the door may only open during a frontal crash in which case any objects within the compartment would only move in a forward direction and not rearward into the occupant compartment, there is no risk of harm from objects inside the compartment escaping into the occupant space.

3. The Performance of the Compartment Door Does Not Create an Increased Safety Risk: Mercedes-Benz cited the provisions of the Safety Act, 49 U.S.C. 30118(d) and 30120(h) and the basis upon which NHTSA evaluates an inconsequentiality petition ''whether an occupant who is affected by the noncompliance is likely to be exposed to a *significantly greater risk* than an occupant in a compliant vehicle.'' *See* 69 FR 19897, 19900 (April 14, 2004) (emphasis added).

As described below, the issue here does not impact the operational safety of the vehicle and will not create an enhanced risk to vehicle occupants because, in the limited, frontal crash scenario in which the door could potentially open, neither the door itself nor any objects within the compartment could cause injury to vehicle occupants.

4. *Description of the Compartment Door:* The interior compartment door at issue in this petition is a storage compartment used in vehicles with the Wireless Media Interface (WMI) package. The WMI feature allows users to wirelessly charge cell phones within the compartment and the compartment can also be used to store small objects like coins and accessories. The compartment is located within the center console between the driver and front passenger's seat and the storage portion of the compartment is approximately 15 cm/6 inches long and 13 cm/5 inches deep.

In normal use, the door remains shut until an occupant pushes the door forward. The door moves forward in an upward direction, towards the front of the vehicle. When reaching the top, the door is enclosed within the housing of the compartment itself and, with an additional push is snapped into place to remain open. Once it is snapped into place, in order to close the door an occupant can pull the door slightly from the housing. The door then closes automatically. As a result, if the door does open briefly during a frontal crash and is not pushed fully into the latched open position, it will quickly and automatically close.

5. *It is Not Possible for the Compartment Door to Strike Occupants:* The performance of the interior compartment door does not present any of the safety risks contemplated by FMVSS No. 201 because there is no risk of vehicle occupants coming into contact with or striking the compartment door. When originally promulgated, the interior compartment door provisions in FMVSS No. 201 were focused on preventing injuries that could occur from hard interior doors, such as the glove compartment door, striking an occupant. *See* 33 FR 15794 (October 24, 1968) (considering ''the potential injury that can be caused by an open interior compartment door because . . . [prior requirements] do not afford protection against the type of *protrusion created by an open interior compartment door*'') (emphasis added); *see also Letter to M. Smith,* August 26, 1988 (''the purpose of the requirement is to prevent a door from flying open and striking an occupant in a crash.'') The standard, which was also promulgated at a time when seat belt use was substantially lower than it is today, was directed toward mitigating injuries that can be caused by interior doors with hard and sharp surfaces opening unexpectedly. That risk is not present here.

The location, geometry, and operation of the compartment door prevent it from causing or contributing to an injury in the event of a crash. The door is located in the bottom of the center console, in the area between the driver and front passenger seats. The door is installed in a location where it could not strike a vehicle occupant should it open in a crash. The door, moreover, does not have any sharp edges and is not comprised of a hard, metal surface.

Further, because of the manner in which the door opens, there is no opportunity for the door to strike a vehicle occupant. The door covering slides forwards and into the housing of the compartment itself, it does not extend outwards into the passenger compartment which is the concern that the standard is intended to address. In typical use, the operator slides the door covering away towards the front of the vehicle, away from the occupant compartment and into the center console where it becomes fully enclosed within the housing. By contrast, glove box doors and other interior compartment doors on hinges that open outwards and into the occupant compartment are the traditional types of doors that FMVSS No. 201 was designed to address because the door's surface could come into contact with a vehicle occupant if it opened in a crash. This same risk does not exist with the door covering in the AMG vehicles based on its geometry and design.

Additionally, the compartment door will automatically close after opening if it has not been snapped into place to stay open. In the event of a frontal crash force that is severe enough to cause the door to open, the door would open for an extremely short period of time, a matter of milliseconds, and then would automatically pull back into place and the door will close again. Because of the design and operation of the door, it remains open for a matter of milliseconds seconds after which it will retreat back into its fully closed position.

[1] The crash lock mechanism is not installed on vehicles offered for sale outside of the United States, Canada and South Korea, where FMVSS 201 or its equivalent has been adopted. MB AG is not aware of any claims or reports of injuries due to the performance of the interior compartment door in any market.

6. *There is No Risk of Injury to Occupants from Objects Escaping the Compartment:* Mercedes-Benz says there is no potential for items inside the storage compartment to escape and injure vehicle occupants. Although the scope of the standard has always been focused on risks of injury presented by the hard surface of vehicle doors opening in a crash, there is similarly no enhanced risk to safety from items escaping the compartment and causing injury. The compartment door has the potential to open only in specific situations, a frontal crash with loads exceeding 24g of force. The compartment door operates within the requirements of the standard at all other times.[2] Even in a crash where the load force was severe enough, the compartment lid would open and completely close again all within approximately 250 ms of the crash. Further, even in a front end crash that was severe enough to open the compartment door, the direction of the crash forces precludes objects from escaping. In a front end collision with high vehicle deceleration, any objects inside the storage compartment at the time would shift forward, in the same direction in which the vehicle is moving. Because the force of deceleration causes the items to shift forward, they will move forward and deeper into the compartment and will remain enclosed within the compartment during the crash event. During the intervening moments following the crash, the door will automatically close and secure the items within the compartment.

7. Mercedes-Benz stated that the above described marking discrepancy does not create a safety risk and that they are not aware of any warranty claims, field reports, customer complaints, legal claims, or injuries related to this noncompliance. Even if the compartment door was to open in the event of a severe crash, there is no increased risk of injury due to the location of the door covering itself, its operation and design that allows it to retract into the console housing and the fact that it will automatically close shut after an extremely short period of time. Vehicle occupants are not at risk of coming into contact with the door itself (when opened or closed) and there is no risk of objects stored inside the compartment from escaping into the occupant space.

Mercedes-Benz concluded that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Mercedes-Benz no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Mercedes-Benz notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2020–10954 Filed 5–20–20; 8:45 am]

BILLING CODE 4910–59–P

[2] The vehicles fully meet the performance requirements when tested to S5.3.l(a) and S5.3.l(b).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Appraisals for Higher-Priced Mortgage Loans

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, ''Appraisals for Higher-Priced Mortgage Loans.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before June 22, 2020.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0313, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0313'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0313, U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection [1] following the close of the 30-day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0313'' or ''Appraisals for Higher-Priced Mortgage Loans.'' Upon finding

[1] On February 24, 2020, the OCC published a 60-day notice for this information collection, 84 FR 10511.

the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks OMB to extend its approval of the collection contained in this notice.

Title: Appraisals for Higher-Priced Mortgage Loans.

Description: This information collection relates to section 1471 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which added a new section 129H to the Truth in Lending Act (TILA) establishing special appraisal requirements for ''higher-risk mortgages.'' For certain mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, creditors must obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. The statute permits the OCC to issue a rule to include exemptions from these requirements.

The information collection requirements are found in 12 CFR 34.203(c)(1), (c)(2), (d), (e) and (f). This information is required to protect consumers and promote the safety and soundness of creditors making higher-priced mortgage loans (HPMLs) subject to 12 CFR part 34, subpart G. This information is used by creditors to evaluate real estate collateral securing HPMLs subject to 12 CFR 1026.35(c) and by consumers entering these transactions. The collections of information are mandatory for creditors making HPMLs subject to 12 CFR part 34, subpart G.

Under 12 CFR 34.203(e) and (f), a creditor must, no later than the third business day after the creditor receives a consumer's application for an HPML, provide the consumer with a disclosure that informs the consumer that the creditor may order an appraisal to determine the value of the property and charge the consumer for that appraisal, that the creditor will provide the consumer with a copy of any appraisal, and that the consumer may choose to have an additional appraisal conducted at the expense of the consumer. If a loan is an HPML subject to 12 CFR 34.203(c), then, under 12 CFR 34.203(c)(1) and (2), the creditor is required to obtain a written appraisal prepared by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction (Written Appraisal) and provide a copy of the Written Appraisal to the consumer. Under 12 CFR 34.203(d)(1), a creditor is required to obtain an additional appraisal (Additional Written Appraisal) for an HPML that is subject to 12 CFR part 34, subpart G if: (1) The seller acquired the property securing the loan 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent; or (2) the seller acquired the property securing the loan 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20 percent.

Under 12 CFR 34.203(d)(3) and (4), the Additional Written Appraisal must meet the requirements described in 12 CFR 34.203(c)(1) and also include an analysis of: (1) The difference between the price at which the seller acquired the property and the price the consumer is obligated to pay to acquire the property; (2) changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and (3) any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property. Under 12 CFR 34.203(f), a creditor is required to provide the consumer with a copy of any Additional Written Appraisal.

Affected Public: Businesses or other for-profit.

Type of Submission: Regular.

Burden Estimates:

Estimated Number of Respondents: 1,134.

Estimated Total Annual Burden: 292 hours.

Frequency of Response: On occasion.

Comments: On February 24, 2020, the OCC published a 60-day notice for this information collection, 84 FR 10511. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2020–10964 Filed 5–20–20; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8655

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 Reporting Agent Authorization and Revenue Procedure 2012–32.

DATES: Written comments should be received on or before July 20, 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: Reporting Agent Authorization.

OMB Number: 1545–1058.

Form Number: Form 8655 and Revenue Procedure 2012–32.

Abstract: Form 8655 allows a taxpayer to designate a reporting agent to file certain employment tax returns electronically or on magnetic tape, to receive copies of notices and other tax information, and to submit Federal tax deposits. This form allows IRS to disclose tax account information and to provide duplicate copies of taxpayer correspondence to authorized agents. Revenue Procedure 2012–32 provides the requirements for completing and submitting Form 8655, *Reporting Agent Authorization.* An Authorization allows a taxpayer to designate a Reporting Agent to perform certain acts on behalf of a taxpayer.

Current Actions: There are no changes being made to this collection at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 114,250.

Estimated Time per Respondent: 7 hrs., 10 mins.

Estimated Total Annual Burden Hours: 819,050.

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 14, 2020.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2020–10974 Filed 5–20–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5307

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 Application for Determination for Adopters of Modified Volume Submitter Plans.

DATES: Written comments should be received on or before July 20, 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: Application for Determination for Adopters of Modified Volume Submitter Plans.

OMB Number: 1545–0200.

Form Number: 5307.

Abstract: This form is filed by employers or plan administrators who have adopted a prototype plan approved by the IRS National Office or a regional prototype plan approved by the IRS District Director to obtain a ruling that the plan adopted is qualified under IRC sections 401(a) and 501(a). It may not be used to request a letter for a multiple employer plan.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time per Respondent: 51hrs., 23 mins.

Estimated Total Annual Burden Hours: 5,139,000.

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 14, 2020.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2020–10972 Filed 5–20–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

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 Disclosure of Returns and Return Information in Connection With Written Contracts or Agreements for the Acquisition of Property or Services for Tax Administration Purposes.

DATES: Written comments should be received on or before July 20, 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 regulation should be directed to Martha R. Brinson, 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: Disclosure of Returns and Return Information in Connection With Written Contracts or Agreements for the Acquisition of Property or Services for Tax Administration Purposes.

OMB Number: 1545–1821.

Regulation Project Number: TD 9327.

Abstract: The regulations clarify that redisclosures of returns and return information by contractors to agents or subcontractors are permissible, and that the penalty provisions, written notification requirements, and safeguard requirements are applicable to these agents and subcontractors. Section 301.6103(n)–1(e)(3) of the regulations require that before the execution of a contract or agreement for the acquisition of property or services under which returns or return information will be disclosed, the contract or agreement must be made available to the IRS.

Current Actions: There are no changes being made to this regulation at this time.

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 Respondents: 2,500.

Estimated Time per Respondent: 6 mins.

Estimated Total Annual Burden Hours: 250.

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 14, 2020.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2020–10980 Filed 5–20–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

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 Communications Excise Tax; Prepaid Telephone Cards.

DATES: Written comments should be received on or before July 20, 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: Requests for additional information or copies of the regulation 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: Communications Excise Tax; Prepaid Telephone Cards.

OMB Number: 1545–1628.

Regulation Project Number: TD 8855.

Abstract: Carriers must keep certain information documenting their sales of prepaid telephone cards to other carriers to avoid responsibility for collecting tax. The regulations provide rules for the application of the communications excise tax to prepaid telephone cards.

Current Actions: There are no changes being made to this regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 96.

Estimated Time per Respondent: 21.

Estimated Total Annual Burden Hours: 34.6

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 14, 2020.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2020–10973 Filed 5–20–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Concerning Recommendation for Juvenile Employment With the Internal Revenue Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning recommendation for juvenile employment with the Internal Revenue Service.

DATES: Written comments should be received on or before July 20, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Ronald J. Durbala, Internal Revenue Service, room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Recommendation for Juvenile Employment with the Internal Revenue Service.

OMB Number: 1545–1746.

Form Number: 13094.

Abstract: The Form ''Recommendation for Juvenile Employment with the Internal Revenue Service'', is used by 13 Delegated Examining Units and 16 Area Personnel Offices throughout the IRS as a mechanism to screen out questionable applicants when considering juveniles for employment in taxpayers remittance and submission processing functions.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 208 hours.

The following paragraph applies to all 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 if 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 18, 2020.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2020–10958 Filed 5–20–20; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 85 Thursday,

No. 99 May 21, 2020

Part II

The President

Notice of May 20, 2020—Continuation of the National Emergency With Respect to the Stabilization of Iraq

Federal Register
Vol. 85, No. 99
Thursday, May 21, 2020

Presidential Documents

Title 3—

The President

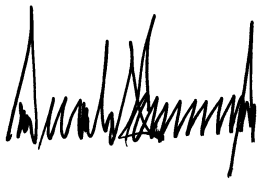
Notice of May 20, 2020

Continuation of the National Emergency With Respect to the Stabilization of Iraq

On May 22, 2003, by Executive Order 13303, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq.

The obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13303, as modified in scope and relied upon for additional steps taken in Executive Order 13315 of August 28, 2003, Executive Order 13350 of July 29, 2004, Executive Order 13364 of November 29, 2004, Executive Order 13438 of July 17, 2007, and Executive Order 13668 of May 27, 2014, must continue in effect beyond May 22, 2020. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the stabilization of Iraq declared in Executive Order 13303.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 20, 2020.

[FR Doc. 2020–11217
Filed 5–20–20; 11:15 am]
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