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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 985

**[Doc. No. AMS–SC–19–0096; SC20–985–1 FR]**

## Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2020–2021 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a recommendation from the Far West Spearmint Oil Administrative Committee (Committee) to establish salable quantities and allotment percentages of Class 1 (Scotch) and Class 3 (Native) spearmint oil produced in Washington, Idaho, Oregon, and designated parts of Nevada and Utah (the Far West) for the 2020–2021 marketing year.

**DATES:** Effective July 13, 2020.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Barry.Broadbent@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West. Part 985 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of spearmint oil producers operating within the area of production, and a public member.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. The Order now in effect states that salable quantities and producer allotment percentages may be established for classes of spearmint oil produced in the Far West. This final rule establishes quantities and percentages for Class 1 (Scotch) and Class 3 (Native) spearmint oil for the 2020–2021 marketing year, which begins on June 1, 2020.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such a handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to §§ 985.50, 985.51, and 985.52, the Order requires the Committee to meet each year to consider supply and demand of spearmint oil and to adopt a marketing policy for the ensuing marketing year. When such considerations indicate a need to establish or to maintain stable market conditions through volume regulation, the Committee recommends salable quantity limitations and producer allotments to regulate the quantity of Far West spearmint oil available to the market.

According to § 985.12, ''salable quantity'' is the total quantity of each class of oil (Scotch or Native) that handlers may purchase from, or handle on behalf of, producers during a given marketing year. The total industry allotment base is the aggregate of all allotment bases held individually by producers as prescribed under § 985.53(d)(1). The total allotment base is revised each year on June 1 due to producer base being lost because of the ''bona fide effort'' production provision of § 985.53(e).

Each producer's prorated share of the salable quantity of each class of oil, or their ''annual allotment'' as defined in § 985.13, is calculated by using an allotment percentage. The percentage is derived by dividing the salable quantity by the total industry allotment base for that same class of oil.

The Committee met on October 16, 2019, to consider its marketing policy for the 2020–2021 marketing year. At that meeting, the Committee determined that, based on the current market and supply conditions, volume regulation for both classes of oil is necessary. With a 7–1 vote, the Committee recommended a salable quantity and allotment percentage for Scotch spearmint oil of 838,404 pounds and 38 percent. The member voting in opposition to the recommendation favored volume regulation, but at a level closer to 30 percent. The Committee voted unanimously on its recommended salable quantity and allotment percentage for Native spearmint oil of 1,230,531 pounds and 49 percent.

This action establishes the amount of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2020–2021 marketing year, which begins on June 1, 2020. Salable quantities and allotment percentages have been placed into effect each season since the Order's inception in 1980.

**Scotch Spearmint Oil**

The Committee's recommended 2020–2021 marketing year salable quantity and allotment percentage for Scotch spearmint oil represent an increase from the previous year's levels. The 2020–2021 marketing year salable quantity of 838,404 pounds is 6,323 pounds more than the 2019–2020 marketing year salable quantity of 832,081 pounds. The allotment percentage, recommended at 38 percent for the 2020–2021 marketing year, is the same as the percentage in effect the previous year. The total estimated allotment base for the coming marketing year is estimated at 2,206,325 pounds. This figure represents a one-percent increase over the 2019–2020 marketing year total allotment base of 2,184,480.

The Committee considered several factors in making its recommendation, including the current and projected future supply, estimated future demand, production costs, and producer prices. The Committee's recommendation also accounts for established acreage of Scotch spearmint oil, consumer demand, existing carry-in, reserve pool volume, and increased production in competing markets.

According to the Committee, as costs of production have increased, many producers have forgone new plantings of Scotch spearmint. This has resulted in a significant decline in production of Scotch spearmint oil over the past years. Production has decreased from 1,113,346 pounds produced in 2016 to an estimated 567,623 pounds produced in 2019.

Industry reports also indicate that trade demand for Far West Scotch spearmint oil has decreased over the past five years. Scotch spearmint oil sales have averaged 832,522 pounds per year over the last five years, while sales have averaged just 720,992 pounds over the last three years. For the 2020–2021 marketing year, the Committee estimates trade demand to be 750,000 pounds, a little higher than the rolling three-year average. In addition to declining spearmint oil demand, increasing production of Scotch spearmint oil in competing markets, most notably Canada and the U.S. Midwest, has put additional downward pressure on the Far West Scotch spearmint oil market.

Given the general decline in demand and anticipated market conditions for the coming year, the Committee decided it was prudent to estimate that the Scotch spearmint oil trade demand for the 2020–2021 marketing year trade will be 750,000 pounds, 55,000 pounds lower than the prior year. Should the volume regulation levels established by this action prove insufficient to adequately supply the market, the Committee has the authority to recommend intra-seasonal increases, as it has in previous marketing years.

The Committee calculated the minimum salable quantity of Scotch spearmint oil that will be required during the 2020–2021 marketing year (471,029 pounds) by subtracting the estimated salable carry-in on June 1, 2020, (278,971) from the estimated trade demand (750,000). This minimum salable quantity represents the estimated minimum amount of Scotch spearmint oil that will be needed to satisfy estimated trade demand for the coming year. To ensure that the market will be fully supplied, the Committee recommended a 2020–2021 marketing year salable quantity of 838,404 pounds. The recommended salable quantity of 838,404 pounds, combined with an estimated 278,971 pounds of salable quantity carried in from the previous year, will yield a total available supply of 1,117,375 pounds of Scotch spearmint oil for the 2020–2021 marketing year, and will leave an estimated 367,375 pounds of salable Scotch spearmint oil to carry into the 2021–2022 marketing year.

Salable carry-in is the primary measure of excess spearmint oil supply under the Order, as it represents overproduction in prior years that is currently available to the market without restriction. Under volume regulation, spearmint oil that is designated as salable continues to be available to the market until it is sold and may be marketed at any time at the discretion of the owner. Salable quantities established under volume regulation over the last four seasons have exceeded sales, leading to a gradual build of Scotch spearmint oil salable carry-in.

The Committee estimates that there will be 278,971 pounds of salable carry-in of Scotch spearmint oil on June 1, 2020. If current market conditions are maintained and the Committee's projections are correct, salable carry-in will increase to 367,375 pounds at the beginning of the 2021–2022 marketing year. This level is above the quantity that the Committee generally considers favorable (150,000 pounds). However, the Committee anticipates that this higher salable carry-in will be manageable given the expected declining production levels of Scotch spearmint oil. The Committee believes that, given the current economic conditions in the Scotch spearmint oil industry, some Scotch spearmint oil producers will not produce enough oil in the 2020–2021 marketing year to fill all of their base allotment. Therefore, it is anticipated that the actual quantity of Scotch spearmint oil carried into the next marketing year will be less than the quantity calculated above.

Spearmint oil held in reserve is oil that has been produced in excess of a producer's marketing year allotment and is not available to the market in the current marketing year without an increase in the salable quantity and allotment percentage. The oil held in the reserve pool is another indicator of excess supply. Scotch spearmint oil held in the reserve pool, which was completely depleted at the beginning of the 2014–2015 marketing year, has been gradually increasing over the past five years. The Committee reported that 132,984 pounds of Scotch spearmint oil were held in the reserve pool as of May 31, 2019. The Scotch spearmint oil reserve is expected to be about the same at the end of the 2019–2020 marketing year. This quantity of reserve pool oil should be an adequate buffer to supply the market, if necessary, if the industry experiences an unexpected increase in demand.

The Committee recommended an allotment percentage of 38 percent for the 2020–2021 marketing year for Scotch spearmint oil. During its October 16, 2019, meeting, the Committee calculated an initial allotment percentage by dividing the minimum required salable quantity (471,029 pounds) by the total estimated allotment base (2,206,325 pounds), resulting in 21.3 percent. However, producers and handlers at the meeting indicated that the computed percentage (21.3 percent) might not adequately supply the potential 2020–2021 Scotch spearmint oil market demand and may also result in inadequate carry-in for the subsequent marketing year. After deliberation, the Committee increased the recommended allotment percentage to 38 percent. The total estimated allotment base (2,206,325 pounds) for the 2020–2021 marketing year, multiplied by the recommended salable allotment percentage (38 percent), yields 838,404 pounds, which is the recommended salable quantity for the 2020–2021 marketing year.

The 2020–2021 marketing year computational data for the Committee's recommendations is detailed below.

(A) *Estimated carry-in of Scotch spearmint oil on June 1, 2020: 278,971 pounds.* This figure is the difference between the 2019–2020 marketing year total available supply of 1,028,971 pounds and the 2019–2020 marketing year estimated trade demand of 750,000 pounds (revised down from the original estimate of 805,000 pounds).

(B) *Estimated trade demand of Scotch spearmint oil for the 2020–2021 marketing year: 750,000 pounds.* This figure was established at the Committee meeting held on October 16, 2019.

(C) *Salable quantity of Scotch spearmint oil required from the 2020–2021 marketing year production: 471,029 pounds.* This figure is the difference between the estimated 2020–2021 marketing year trade demand (750,000 pounds) and the estimated carry-in on June 1, 2020 (278,971 pounds). This salable quantity represents the minimum amount of Scotch spearmint oil production that may be needed to satisfy estimated demand for the coming year.

(D) *Total estimated Scotch spearmint oil allotment base for the 2020–2021 marketing year: 2,206,325 pounds.* This figure represents a one-percent increase over the 2019–2020 total actual allotment base of 2,184,480 pounds, as prescribed by § 985.53(d)(1). The one-percent increase equals 21,845 pounds. This total estimated allotment base is revised each year on June 1 in accordance with § 985.53(e).

(E) *Computed Scotch spearmint oil allotment percentage for the 2020–2021 marketing year: 21.3 percent.* This percentage is computed by dividing the minimum required salable quantity (471,029 pounds) by the total estimated allotment base (2,206,325 pounds).

(F) *Recommended Scotch spearmint oil allotment percentage for the 2020–2021 marketing year: 38 percent.* This is the Committee's recommendation and is based on the computed allotment percentage (21.3 percent) and input from producers and handlers at the October 16, 2019, meeting. The recommended 38 percent allotment percentage reflects the Committee's belief that the computed percentage (21.3 percent) may not adequately supply the anticipated 2020–2021 marketing year Scotch spearmint oil market demand.

(G) *Recommended Scotch spearmint oil salable quantity for the 2020–2021 marketing year: 838,404 pounds.* This figure is the product of the recommended salable allotment percentage (38 percent) and the total estimated allotment base (2,206,325 pounds) for the 2020–2021 marketing year.

(H) *Estimated total available supply of Scotch spearmint oil for the 2020–2021 marketing year: 1,117,375 pounds.* This figure is the sum of the 2020–2021 marketing year recommended salable quantity (838,404 pounds) and the estimated carry-in on June 1, 2020 (278,971 pounds).

For the reasons stated above, the Committee believes that the recommended salable quantity and allotment percentage will adequately satisfy trade demand, will result in a reasonable carry-in for the following year, and will contribute to the orderly marketing of Scotch spearmint oil.

**Native Spearmint Oil**

The Committee recommended a Native spearmint oil salable quantity of 1,230,531 pounds and an allotment percentage of 49 percent for the 2020–2021 marketing year. These figures are, respectively, 161,918 pounds and 7 percentage points lower than the levels established for the 2019–2020 marketing year.

The Committee utilized handlers' anticipated sales estimates of Native spearmint oil for the coming year, historical and current Native spearmint oil production, inventory statistics, and international market data obtained from consultants for the spearmint oil industry to arrive at these recommendations.

The Committee anticipates that 2020 production will total 1,493,686 pounds, similar to last year's production but down from 1,694,684 pounds produced in 2016. Committee figures show that total Native spearmint acres remained relatively static and that the estimated yield, at 165.7 pounds per acre, was up from 160.9 pounds per acre in 2017. Sales of Native spearmint oil for the 2017–2018 marketing year spiked to 1,565,515 pounds. Sales for the current marketing year have cooled a bit, but the Committee still estimates sales through the 2019–2020 marketing year of 1,330,000 pounds, which is near the 7-year average.

The Committee expects that 274,277 pounds of salable Native spearmint oil from prior years will be carried into the 2020–2021 marketing year. This amount is up from the 211,828 pounds of salable oil carried into the 2019–2020 marketing year.

Further, the Committee estimates that there will be 1,153,192 pounds of Native spearmint oil in the reserve pool at the beginning of the 2020–2021 marketing year. This figure is 101,237 pounds higher than the quantity of reserve pool oil held by producers in the previous year and is consistent with the gradual increase in reserves that the industry has experienced over the past three marketing years.

The Committee expects end users of Native spearmint oil to continue to rely on Far West production as their main source of high-quality Native spearmint oil, with market demand similar to the past year. A sharp spike in demand for Native spearmint oil was experienced by handlers late in the 2017–2018 marketing year, spurred by the popularity of a new product in the market. This sharp spike in demand caused the remaining available 2017–2018 marketing year salable quantity to be depleted. While sales in the 2020–2021 marketing year are expected to come down from the 2017–2018 levels, the Committee still anticipates demand to be relatively high.

The Committee estimates the 2020–2021 marketing year Native spearmint oil trade demand to be 1,347,042 pounds. This figure is based on input provided by producers at six production area meetings held in mid-October 2019, as well as estimates provided by handlers and other meeting participants at the October 16, 2019 meeting. This figure represents an increase of 17,042 pounds from the previous year's estimate. The average estimated trade demand for Native spearmint oil derived from the producer meetings was 1,347,042 pounds, whereas the handlers' estimates ranged from 1,150,000 to 1,450,000 pounds. The average of Native spearmint oil sales over the last three years is 1,366,094 pounds. The quantity marketed over the most recent full marketing year, 2018–2019, was 1,245,076 pounds. The Committee chose to be slightly conservative in the establishment of its trade demand estimate for the 2020–2021 marketing year to avoid oversupplying the market.

The estimated 2020–2021 marketing year carry-in of 274,277 pounds of Native spearmint oil, plus the recommended salable quantity of 1,230,531 pounds, results in an estimated total available supply of 1,504,808 pounds of oil during the 2020–2021 marketing year. With the corresponding estimated trade demand of 1,347,042 pounds, the Committee projects that 157,766 pounds of oil will be carried into the 2021–2022 marketing year, resulting in a decrease of 116,511 pounds year-over-year. The Committee estimates that there will be 1,153,192 pounds of Native spearmint oil held in the reserve pool at the beginning of the 2021–2022 marketing year. Should the industry experience an unexpected increase in trade demand, oil in the Native spearmint oil reserve pool could be released to satisfy that demand.

The Committee recommended a producer allotment percentage of 49 percent for the 2020–2021 marketing year. During its October 16, 2019 meeting, the Committee calculated an initial allotment percentage by dividing the minimum required salable quantity (1,072,765 pounds) by the total estimated allotment base (2,511,288 pounds), resulting in 42.7 percent. However, producers and handlers at the meeting expressed that the computed percentage of 42.7 percent may not adequately supply the potential 2020–2021 Native spearmint oil market demand or result in adequate carry-in for the subsequent marketing year. After deliberation, the Committee increased the recommended allotment percentage to 49 percent. The total estimated allotment base (2,511,288 pounds) for the 2020–2021 marketing year multiplied by the recommended salable allotment percentage (49 percent) yields 1,230,531 pounds, the recommended salable quantity for the year.

The 2020–2021 marketing year computational data for the Committee's recommendations is further outlined below.

(A) *Estimated carry-in of Native spearmint oil on June 1, 2020: 274,277 pounds.* This figure is the difference between the revised 2019–2020 marketing year total available supply of 1,604,277 pounds and the revised 2019–2020 marketing year estimated trade demand of 1,330,000 pounds.

(B) *Estimated trade demand of Native spearmint oil for the 2020–2021 marketing year: 1,347,042 pounds.* This estimate was established by the Committee at the October 16, 2019, meeting.

(C) *Salable quantity of Native spearmint oil required from the 2020–2021 marketing year production: 1,072,765 pounds.* This figure is the difference between the estimated 2020–2021 marketing year estimated trade demand (1,347,042 pounds) and the estimated carry-in on June 1, 2020 (274,277 pounds). This is the minimum amount of Native spearmint oil that the Committee believes will be required to meet the anticipated 2020–2021 marketing year trade demand.

(D) *Total estimated allotment base of Native spearmint oil for the 2020–2021 marketing year: 2,511,288 pounds.* This figure represents a one-percent increase over the 2019–2020 total actual allotment base of 2,486,424 pounds as prescribed in § 985.53(d)(1). The one-percent increase equals 24,864 pounds of oil. This estimate is revised each year on June 1, due to adjustments resulting from the bona fide effort production provisions of § 985.53(e).

(E) *Computed Native spearmint oil allotment percentage for the 2020–2021 marketing year: 42.7 percent.* This percentage is calculated by dividing the required salable quantity (1,072,765 pounds) by the total estimated allotment base (2,511,288 pounds) for the 2020–2021 marketing year.

(F) *Recommended Native spearmint oil allotment percentage for the 2020–2021 marketing year: 49 percent.* This is the Committee's recommendation based on the computed allotment percentage (42.7 percent) and input from producers and handlers at the October 16, 2019, meeting. The recommended 49 percent allotment percentage is also based on the Committee's belief that the computed percentage (42.7 percent) may not adequately supply the potential market for Native spearmint oil in the 2020–2021 marketing year.

(G) *Recommended Native spearmint oil 2020–2021 marketing year salable quantity: 1,230,531 pounds.* This figure is the product of the recommended allotment percentage (49 percent) and the total estimated allotment base (2,511,288 pounds). This amount is less than the estimated trade demand for the 2020–2021 marketing year but could be increased as needed through an intra-seasonal increase in the salable quantity and allotment percentage.

(H) *Estimated available supply of Native spearmint oil for the 2020–2021 marketing year: 1,504,808 pounds.* This figure is the sum of the 2020–2021 recommended salable quantity (1,230,531 pounds) and the estimated carry-in on June 1, 2020 (274,277 pounds).

The Committee's recommended Scotch and Native spearmint oil salable quantities and allotment percentages of 838,404 pounds and 38 percent, and 1,230,531 pounds and 49 percent, respectively, will match the available supply of each class of spearmint oil to the estimated demand of each, thus avoiding extreme fluctuations in inventories and prices. This rule is similar to the regulations issued in prior seasons.

The salable quantities established in this final rule are not expected to cause a shortage of either class of spearmint oil. Any unanticipated or additional market demand for either class of spearmint oil which may develop during the marketing year could be satisfied by an intra-seasonal increase in the salable quantity and corresponding allotment percentage. The Order contains a provision in § 985.51 for intra-seasonal increases to allow the Committee the flexibility to respond quickly to changing market conditions.

Under volume regulation, producers who produce more than their annual allotments during the marketing year may transfer such excess spearmint oil to producers who have produced less than their annual allotment. In addition, on December 1 of each year, producers who have not transferred their excess spearmint oil to other producers must place their excess spearmint oil production into the reserve pool to be released in the future in accordance with market needs and under the Committee's direction.

USDA has reviewed the Committee's marketing policy statement for the 2020–2021 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulation, meets the requirements of §§ 985.50 and 985.51.

The establishment of salable quantities and allotment percentages in this rule is expected to fully satisfy anticipated market needs. In determining anticipated market needs, the Committee considered historical sales, as well as changes and trends in production and demand. This rule also provides producers with information regarding the amount of spearmint oil that should be produced for the 2020–2021 season to meet anticipated market demand.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 39 producers and 94 producers of Scotch and Native spearmint oil, respectively, in the regulated production area and approximately 8 spearmint oil handlers subject to regulation under the Order. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $30,000,000, and small agricultural producers are defined as those having annual receipts

of less than $1,000,000 (13 CFR 121.201).

The Committee reported that recent producer prices for spearmint oil have ranged from $14.00 to $17.00 per pound. The National Agricultural Statistics Service (NASS) reported that the 2018 U.S. season average spearmint oil producer price per pound was $16.80. Multiplying $16.80 per pound by 2017–2018 marketing year spearmint oil utilization of 1,963,028 million pounds yields a crop value estimate of about $33.0 million. Total 2017–2018 spearmint oil utilization, reported by the Committee, was 717,952 pounds and 1,245,076 pounds for Scotch and Native spearmint oil, respectively.

Given the accounting requirements for the volume regulation provisions of the Order, the Committee maintains accurate records of each producer's production and sales. Using the $16.80 average spearmint oil price, and Committee production data for each producer, the Committee estimates that 36 of the 39 Scotch spearmint oil producers and 89 of the 94 Native spearmint oil producers could be classified as small entities under the SBA definition.

There is no third party or governmental entity that collects and reports spearmint oil prices received by spearmint oil handlers. However, the Committee estimates an average spearmint oil handling markup at approximately 20 percent of the price received by producers. Multiplying 1.20 by the 2018 producer price of $16.80 yields a handler free on board (f.o.b.) price per pound estimate of $20.16.

Multiplying this handler f.o.b. price by spearmint oil utilization of 1,963,028 pounds results in an estimated handler-level spearmint oil value of $39.6 million. Dividing this figure by the number of handlers (8) yields estimated average annual handler receipts of about $5.0 million, which is well below the SBA threshold for small agricultural service firms.

Furthermore, using confidential data on pounds handled by each handler, and the abovementioned estimated handler price per pound, the Committee reported that it is not likely that any of the eight handlers had a 2018–2019 marketing year spearmint oil sales value that exceeded the $30 million SBA threshold.

Therefore, in view of the foregoing, the majority of producers of spearmint oil may be classified as small entities and all of the handlers of spearmint oil may be classified as small entities.

This final rule establishes the quantity of spearmint oil produced in the Far West, by class, which handlers may purchase from, or handle on behalf of, producers during the 2020–2021 marketing year. The Committee recommended this action to help maintain stability in the spearmint oil market by matching supply to estimated demand, thereby avoiding extreme fluctuations in supplies and prices. Establishing quantities that may be purchased or handled during the marketing year through volume regulations allows producers to coordinate their spearmint oil production with the expected market demand. Authority for this action is provided in §§ 985.50, 985.51, and 985.52.

The Committee estimated trade demand for the 2020–2021 marketing year for both classes of oil at 2,097,042 pounds and expects that the combined salable carry-in will be 553,248 pounds. The combined required salable quantity is 1,543,794 pounds. Under volume regulation, total sales of spearmint oil by producers for the 2020–2021 marketing year will be held to 2,622,183 pounds (the recommended salable quantity for both classes of spearmint oil of 2,068,935 pounds plus 553,248 pounds of carry-in).

This total available supply of 2,622,183 pounds should be more than adequate to supply the 2,097,042 pounds of anticipated total trade demand for spearmint oil. In addition, as of May 31, 2019, the total reserve pool for both classes of spearmint oil stood at 1,184,939 pounds. Furthermore, that quantity is expected to rise over the course of the 2019–2020 marketing year to 1,308,651. Should trade demand increase unexpectedly during the 2020–2021 marketing year, reserve pool spearmint oil could be released into the market to supply that increase in demand.

The established allotment percentages, upon which 2020–2021 marketing year producer allotments are based, are 38 percent for Scotch spearmint oil and 49 percent for Native spearmint oil. Without volume regulation, producers will not be held to these allotment levels, and could sell unrestricted quantities of spearmint oil.

The USDA econometric model used to evaluate the Far West spearmint oil market estimated that the season average producer price per pound (from both classes of spearmint oil) would decline about $2.10 per pound without volume regulation. The surplus situation for the spearmint oil market that would exist without volume regulation in the 2020–2021 marketing year also would likely dampen prospects for improved producer prices in future years because of the excessive buildup in stocks.

In addition, the econometric model estimated that spearmint oil prices would fluctuate with greater amplitude in the absence of volume regulation. The coefficient of variation, or CV (a standard measure of variability), of Far West spearmint oil producer prices for the period 1980–2018 (the years in which the Order has been in effect), is 25 percent, compared to 49 percent for the 20-year period (1960–1979) immediately prior to the establishment of the Order. Since higher CV values correspond to greater variability, this is an indicator of the price stabilizing impact of the Order.

The use of volume regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume regulation is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

The Committee discussed alternatives to its recommended volume regulation levels for both classes of spearmint oil. The Committee rejected the idea of not regulating any volume for either class of spearmint oil because of the severe, price-depressing effects that will likely occur without volume regulation. The Committee also discussed and considered salable quantities and allotment percentages that were above and below the levels that were ultimately recommended for both classes of spearmint oil. Ultimately, the action recommended by the Committee was to maintain the allotment percentage for Scotch spearmint oil (which will slightly increase the salable quantity) and to decrease both the salable quantity and allotment percentage for Native spearmint oil from the levels established for the 2019–2020 marketing year.

As noted earlier, the Committee's recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil was made after careful consideration of all available information including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for

each class of oil, including whether the estimated season average price to producers is likely to exceed parity.

Based on its review, the Committee believes that the salable quantities and allotment percentages established in this rule will achieve the objectives sought. The Committee also believes that, should there be no volume regulation in effect for the upcoming marketing year, the Far West spearmint oil industry will return to the pronounced cyclical price patterns that occurred prior to the promulgation of the Order. As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the Order's inception. The salable quantities and allotment percentages established herein are expected to facilitate the goal of maintaining orderly marketing conditions for Far West spearmint oil for the 2020–2021 and future marketing years.

Costs to producers and handlers, large and small, resulting from this action are expected to be offset by the benefits derived from a more stable market and increased returns. The benefits of this rule are expected to be equally available to all producers and handlers regardless of their size.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes are necessary in those requirements as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This rule establishes the salable quantities and allotment percentages for Scotch spearmint oil and Native spearmint oil produced in the Far West during the 2020–2021 marketing year. Accordingly, this rule does not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public-sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS 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.

A proposed rule concerning this action was published in the **Federal Register** on February 20, 2020 (85 FR 9699). Copies of the proposed rule were also mailed or sent via facsimile to all Far West spearmint oil handlers. The proposal was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending April 20, 2020, was provided for interested persons to respond to the proposal. No comments were received during the comment period. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 985**

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

## PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Add § 985.235 to read as follows:

### § 985.235 Salable quantities and allotment percentages—2020–2021 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2020, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 838,404 pounds and an allotment percentage of 38 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,230,531 pounds and an allotment percentage of 49 percent.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2020–10945 Filed 6–10–20; 8:45 am]

**BILLING CODE 3410–02–P**

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Parts 120 and 121

**[Docket Number SBA–2020–0034]**

**RIN 3245–AH48**

## Business Loan Program Temporary Changes; Paycheck Protection Program—Eligibility of Certain Telephone Cooperatives

**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). This interim final rule supplements previously published interim final rules by providing guidance on additional eligibility requirements for certain telephone cooperatives, and requests public comment.

**DATES:**

*Effective date:* This rule is effective June 8, 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 July 13, 2020.

**ADDRESSES:** You may submit comments, identified by number SBA–2020–0034 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:** 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, May 14, 2020, May 18, 2020, May 20, 2020, and May 22, 2020; SBA and Treasury posted an additional interim final rule on May 22, 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 for certain telephone cooperatives, and requests public comment.

## 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.

Among the categories of entities that are eligible PPP borrowers are business concerns and certain nonprofit organizations described in section 501(c)(3) of the Internal Revenue Code (the Code). This interim final rule addresses the eligibility of mutual or cooperative telephone companies that are described in section 501(c)(12) of the Internal Revenue Code (telephone cooperatives) as PPP borrowers. Existing SBA regulations define ''business concern'' as ''a business entity organized for profit,'' subject to certain limitations. 13 CFR 121.105(a)(1). Generally, telephone cooperatives are organizations that are owned and controlled by members who receive telecommunications services from the cooperative. Telephone cooperatives periodically return any excess of net operating revenues over their cost of operations—such as through ''capital credits''—to their member-owners. In addition, telephone cooperatives meeting the description of section 501(c)(12) of the Code may be exempt from federal income taxation under section 501(a) of the Code. To qualify for the exemption, a telephone cooperative must receive at least 85 percent of its income each year from its members. The 85 percent member income test is computed annually. A telephone cooperative may be exempt in one year, lose exemption in another year if it does not derive at least 85 percent of its income from members, and become exempt in a third year. Because of their potential tax exemption under section 501(c)(12) of the Code, telephone cooperatives have faced uncertainty about their eligibility to receive PPP loans.

The Administrator, in consultation with the Secretary, understands that telephone cooperatives are unusual in that they may be exempt from taxation or organized under state nonprofit statutes in certain jurisdictions, while they operate as businesses. For example, telephone cooperatives provide telecommunications services and distribute capital credits to their member-owners.

On May 14, 2020, SBA posted an interim final rule providing that certain electric cooperatives, which may also be exempt from taxation or organized under state nonprofit statutes, but which return any excess of net operating revenues over their cost of operations to their member-owners, will be considered to be ''a business entity organized for profit'' under 13 CFR 121.105(a)(1) for purposes of the PPP and therefore eligible to receive PPP loans, provided they meet other eligibility criteria. *See* 85 FR 29847. Because telephone cooperatives also operate as businesses, as described below, and to provide certainty to potential PPP applicants, this interim final rule provides that, for purposes of the PPP, a telephone cooperative that is exempt from federal income taxation under section 501(c)(12) of the Code also will be considered to be ''a business entity organized for profit'' under 13 CFR 121.105(a)(1). As a result, such telephone cooperatives are eligible PPP borrowers, as long as other eligibility requirements are met.

## 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 July 13, 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, 85 FR 27287, 85 FR 29845, 85 FR 29842, 85 FR 29847, 85 FR 30835, 85 FR 31357, 85 FR 33004, and 85 FR 33010), collectively, the PPP Interim Final Rules.

1. Eligibility of Certain Telephone Cooperatives

*Are telephone cooperatives that are exempt from federal income taxation under section 501(c)(12) of the Internal Revenue Code eligible for a PPP loan?*

Yes. Telephone cooperatives provide telecommunications services and return any excess of net operating revenues over their cost of operations to their member-owners, such as through capital credits. Accordingly, for purposes of the PPP, the Administrator, in consultation with the Secretary, has determined that a telephone cooperative that is exempt from federal income taxation under section 501(c)(12) of the Internal Revenue Code will be considered to be ''a business entity organized for profit'' for purposes of 13 CFR 121.105(a)(1). As a result, such entities are eligible PPP borrowers, as long as other eligibility requirements are met. To be eligible, a telephone cooperative must satisfy the employee-based size standard established in the CARES Act, SBA's employee-based size standard corresponding to its primary industry, if higher, or both tests in SBA's ''alternative size standard.'' [1] The Administrator, in consultation with the Secretary, has determined that this treatment is appropriate to effectuate the purposes of the CARES Act to provide assistance to eligible PPP borrowers, including business concerns, affected by the COVID–19 emergency.

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

[1] Under the alternative size standard, a business concern, including a telephone cooperative, can qualify for the PPP as a small business concern if, as of March 27, 2020: (1) The maximum tangible net worth of the business was not more than $15 million; and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than $5 million. For a telephone cooperative that does not have net income, the telephone cooperative's capital credits distributed to its owner-members will be considered its net income.

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. 2020–12623 Filed 6–8–20; 2:00 pm]

**BILLING CODE 8026–03–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2020–0546; Project Identifier 2020–CE–001–AD; Amendment 39–21137; AD 2020–03–50]**

**RIN 2120–AA64**

## Airworthiness Directives; Cirrus Design Corporation Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Cirrus Design Corporation (Cirrus) Model SF–50 airplanes. This AD was sent previously as an emergency AD to all known U.S. owners and operators of these airplanes. This AD requires disconnecting and removing the headset amplifier and microphone interface circuit card assemblies for the 3.5 mm audio and microphone jacks. This AD was prompted by a cabin fire incident that occurred on a Cirrus Model SF50 airplane during ground operations where the operator observed smoke exiting from behind the right sidewall interior panel. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective June 11, 2020 to all persons except those persons to whom it was made immediately effective by Emergency AD 2020–03–50, issued on February 14, 2020, which contained the requirements of this amendment.

The Director of the Federal Register approved the incorporation by reference of a certain publication identified in this AD as of June 11, 2020.

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

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

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

For service information identified in this final rule, contact Cirrus Design Corporation; 4515 Taylor Circle Duluth, MN 55811; phone: (800) 279–4322; email: *info@cirrusaircraft.com;* internet: *https://cirrusaircraft.com.* You may view the referenced 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–2020–0546.

### 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–2020–0546; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Joseph Dubusky, Aerospace Engineer, Chicago ACO Branch, FAA, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; phone: 847–294–7543; fax: 847–294–7834; email: *joseph.dubusky@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

On February 14, 2020, the FAA issued Emergency AD 2020–03–05, which requires disconnecting and removing the headset amplifier and microphone interface circuit card assemblies. This emergency AD was sent previously to all known U.S. owners and operators of these airplanes. This action was prompted by a cabin fire incident that occurred on a Cirrus Model SF50 airplane during ground operations. The operator observed smoke exiting from behind the right sidewall interior panel located behind crew seat 2 and forward of passenger seat 5. The investigation into the incident determined the probable root cause was a malfunction of the headset amplifier (part number (P/N) 38849–001) and the microphone interface (P/N 35809–001) circuit card assemblies for the 3.5 millimeter (mm) audio and microphone jacks. This malfunction can result in an electrical short and subsequent uncontained cabin fire without activating circuit protection.

This condition, if not addressed, could lead to an uncontained cabin fire, resulting in possible occupant injury or loss of airplane control.

### Related Service Information Under 1 CFR Part 51

The FAA reviewed Cirrus Alert Service Bulletin Number SBA5X–23–03, dated February 7, 2020 (SBA5X–23–03). The service information contains instructions to disconnect and remove the headset amplifier and microphone interface circuit card assemblies for the 3.5 mm audio and microphone jacks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

### FAA's Determination

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

### AD Requirements

This AD requires accomplishing the actions specified in SBA5X–23–03 as described previously.

### FAA's Justification and Determination of the Effective Date

An unsafe condition exists that required the immediate adoption of Emergency AD 2020–03–50, issued on February 14, 2020, to all known U.S. owners and operators of these airplanes. The FAA found that the risk to the flying public justified waiving notice and comment prior to adoption of this rule because immediate corrective action was necessary to prevent an electrical short and subsequent uncontained cabin fire, which could result in occupant injury or loss of airplane control. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons. Therefore, the FAA finds good cause that notice and

opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include Docket Number FAA–2020–0546 and Project Identifier 2020–CE–001–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

**Costs of Compliance**

The FAA estimates that this AD affects 173 airplanes of U.S. registry.

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

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Remove audio and microphone circuit cards | 6 work-hours × $85 per hour = $510 ..... | N/A | $510 | $88,230 |

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 control warranty coverage for affected individuals. As a result, the FAA has included all costs in its 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 Flexibility Act**

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

**Regulatory Findings**

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

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

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

(2) Will not affect intrastate aviation in Alaska.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2020–03–50 Cirrus Design Corporation:** Amendment 39–21137; Docket No. FAA–2020–0546; Project Identifier 2020–CE–001–AD.

**(a) Effective Date**

This airworthiness directive (AD) is effective June 11, 2020 to all persons except those persons to whom it was made immediately effective by Emergency AD 2020–03–50, issued on February 14, 2020, which contained the requirements of this amendment.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Cirrus Design Corporation (Cirrus) Model SF50 airplanes, serial numbers 0005 through 0176 and 0178, certificated in any category.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 23; Communications.

**(e) Unsafe Condition**

This AD was prompted by a cabin fire incident that occurred on a Cirrus Model SF50 airplane during ground operations. The investigation into the incident determined the probable root cause was a malfunction of the headset amplifier (part number (P/N) 38849–001) and the microphone interface (P/N 35809–001) circuit card assemblies for the 3.5 millimeter (mm) audio and microphone jacks. The FAA is issuing this AD to prevent an electrical short and subsequent uncontained cabin fire, which could result in occupant injury or loss of airplane control.

**(f) Compliance**

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

**(g) Corrective Action**

Before further flight, disconnect and remove the headset amplifier and microphone interface circuit card assemblies by following the Accomplishment Instructions, steps A. and G. through K., of

Cirrus Alert Service Bulletin Number SBA5X–23–03, dated February 7, 2020.

**(h) Special Flight Permit**

Special flight permits are prohibited.

**(i) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Chicago 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 (j) 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.

**(j) Related Information**

For more information about this AD, contact Joe Dubusky, Aerospace Engineer, Chicago ACO Branch, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: 847–294–7543; fax: 847–294–7834; email: *joseph.dubusky@faa.gov.*

**(k) Material Incorporated by Reference**

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

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

(i) Cirrus Alert Service Bulletin Number SBA5X–23–03, dated February 7, 2020.

(ii) [Reserved]

(3) For the service information identified in this AD, contact Cirrus Design Corporation, Cirrus Design Corporation; 4515 Taylor Circle Duluth, MN 55811; phone: (800) 279–4322; email: *info@cirrusaircraft.com;* internet: *https://cirrusaircraft.com.*

(4) You may view the referenced 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 the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For more 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 28, 2020.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2020–12498 Filed 6–10–20; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2018–0866; Product Identifier 2018–SW–083–AD; Amendment 39–21145; AD 2020–12–10]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Textron Inc. (Type Certificate Previously Held by Bell Helicopter Textron Inc.) Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2011–12–08 for Bell Helicopter Textron Inc. (Bell), Model 205A, 205A–1, 205B, 212, 412, 412CF, and 412EP helicopters. AD 2011–12–08 required a one-time inspection of the tail rotor (T/R) blade for corrosion and pitting. This new AD retains the requirements of AD 2011–12–08 while excluding certain T/R blades from the applicability. This AD was prompted by new manufacturing and inspection procedures implemented by Bell that correct the unsafe condition on more recently manufactured T/R blades. The actions of this AD are intended to address an unsafe condition on these products.

**DATES:** This AD is effective July 16, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 5, 2011 (76 FR 35334, June 17, 2011).

**ADDRESSES:** For service information identified in this final rule, contact Bell Textron Inc., P.O. Box 482, Fort Worth, TX 76101; telephone 817–280–3391; fax 817–280–6466; or at *https://www.bellcustomer.com.* You may view this 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–2018–0866.

### Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* in Docket No. FAA–2018–0866; 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, any service information that is incorporated by reference, any comments received, and other information. The street address for Docket Operations is Docket Operations, U.S. Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Kuethe Harmon, Safety Management Program Manager, DSCO Branch, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone 817–222–5198; email *kuethe.harmon@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to remove AD 2011–12–08, Amendment 39–16715 (76 FR 35334, June 17, 2011) (''AD 2011–12–08'') and add a new AD. AD 2011–12–08 applied to Bell Model 205A, 205A–1, 205B, 212, 412, 412CF, and 412EP helicopters with a T/R blade, part number 212–010–750 (all dash numbers), all serial numbers (S/Ns) except those with a prefix of ''A'' and the number 17061 or larger, and required a one-time inspection of the T/R blade for corrosion and pitting. The NPRM published in the **Federal Register** on April 11, 2019 (84 FR 14626). The NPRM proposed to retain the requirements of AD 2011–12–08 but remove blades with an S/N prefix of ''BH'' from the applicability. The proposed actions were intended to correct the unsafe conditions on these products.

Since the FAA issued the NPRM, Bell Helicopter Textron Inc., has changed its name to Bell Textron Inc. This final rule reflects that change and updates the contact information to obtain service documentation.

### Comments

After the NPRM was published, the FAA received comments from five commenters, four from individuals and one from the European Union Aviation Safety Agency (EASA). The following presents the comments received on the NPRM and the FAA's response to each comment.

### Support for the NPRM

Two individual commenters supported the NPRM.

### Comments Requesting More Information

EASA and an individual commenter requested that the FAA provide more information about the unsafe condition and the related service information.

*Request:* One individual requested details regarding the manufacturing anomalies due to the chemical milling process, how the process affected the

manufacturing of other parts, and what manufacturing changes have been made to ensure future problems do not continue.

*FAA Response:* The FAA agrees to provide additional information. AD 2011–12–08 was issued in 2011 to address manufacturing anomalies in the chemical milling process. Chem-milled steps are applied to all tail rotor metal blade spars. Pits in the spars were found along the step of straight chem-mill cuts. Gas bubbles were trapped on the step of the cut, and this created pits down the length of the step in the radius. To address this, Bell advised its supplier to better agitate the tanks, change the wetting agent, or use vertical racking instead of horizontal. In addition to corrective actions taken by the chem-mill supplier, Bell added inspections for chem-mill defects upon receipt of the spars. No problems have recurred since the AD 2011–12–08 was issued. This superseding AD does not change any of the corrective actions from AD 2011–12–08. This superseding AD only excludes a newly manufactured part that is not subject to the unsafe condition identified in AD 2011–12–08.

*Request:* EASA requested the FAA make the Bell service bulletins referenced in the NPRM available for review in the AD docket. EASA also asked whether Bell will revise its service bulletins to exclude blades with the prefix ''BH.''

*FAA Response:* Because the Bell service bulletins requested by EASA were incorporated by reference in AD 2011–12–08, they are available on the internet at *https://www.regulations.gov* in AD Docket No. FAA–2011–0561. In addition, they will be available in the AD docket for this new AD, Docket No. FAA–2018–0866. The FAA is unaware of whether Bell will revise its service bulletins.

**Request for the FAA To Inspect the T/R Blades**

One commenter disagreed with the FAA's proposal to supersede the AD by removing T/R blades with an S/N with a prefix of ''BH'' from the applicability. The commenter stated that these blades should still be inspected by the FAA.

*FAA Response:* The FAA has determined that the unsafe condition addressed by this AD does not apply to T/R blades with an S/N with a prefix of ''BH''. Therefore, those blades have been removed from the applicability. In addition, neither AD 2011–12–08 nor this superseding AD require operators to have the T/R blades inspected by the FAA. Instead, the T/R blades must be inspected using standard requirements under 14 CFR parts 43 and 145.

**FAA's Determination**

The FAA has reviewed the relevant information and determined that an 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.

**Related Service Information Under 1 CFR Part 51**

The FAA has reviewed the following Bell Alert Service Bulletins, all Revision A, and all dated December 8, 2009, which specify a one-time inspection of the T/R blades for corrosion or pitting, and repairing or replacing the T/R blade if corrosion, pitting, or other damage is discovered:

- Alert Service Bulletin (ASB) No. 205–09–102, for Model 205A and 205A–1 helicopters;
- ASB No. 205B–09–54, for Model 205B helicopters;
- ASB No. 212–09–134, for Model 212 helicopters;
- ASB No. 412–09–136, for Model 412 and 412EP helicopters; and
- ASB No. 412CF–09–38, for Model 412CF helicopters.

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

Inspecting a T/R blade takes about 10 work-hours and no parts for an estimated cost of $850 per helicopter and $326,400 for the U.S. fleet.

Repairing a T/R blade takes about 10 work-hours and parts cost $750 for an estimated replacement cost of $1,600 per blade.

Replacing a T/R blade takes about 10 work-hours and parts cost $28,120 for an estimated replacement cost of $28,970 per blade.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–12–08, Amendment 39-16715 (76 FR 35334, June 17, 2011), and adding the following new AD:

**2020–12–10 Bell Textron Inc. (Type Certificate Previously Held by Bell Helicopter Textron Inc.):** Amendment 39–21145; Docket No. FAA–2018–0866; Product Identifier 2018–SW–083–AD.

**(a) Applicability**

This AD applies to Bell Textron Inc. (Type Certificate previously held by Bell Helicopter Textron Inc.) Model 205A, 205A–1, 205B, 212, 412, 412CF, and 412EP helicopters, certificated in any category, with a tail rotor (T/R) blade part number 212–010–750 (all dash numbers) installed, all serial numbers (S/Ns) except:

(1) S/Ns with a prefix of ''BH''; or

(2) S/Ns with a prefix of ''A'' and a number 17061 or larger.

**(b) Unsafe Condition**

This AD defines the unsafe condition as a pit or corrosion in the forward spar of a T/R blade. This condition could result in a crack in the T/R blade, loss of the T/R blade, and subsequent loss of control of the helicopter.

**(c) Affected ADs**

This AD replaces AD 2011–12–08, Amendment 39–16715 (76 FR 35334, June 17, 2011) (''AD 2011–12–08'').

**(d) Effective Date**

This AD becomes effective July 16, 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) Within 25 hours time-in-service or 30 days, whichever occurs first:

(i) Remove the T/R hub and blade assembly from the helicopter and remove the T/R blade from the hub. Remove the paint from the spar area on both sides of the T/R blade by following the Accomplishment Instructions, paragraphs 3. through 5., of the following Bell Helicopter Textron, Inc. Alert Service Bulletins, all Revision A, and all dated December 8, 2009: Alert Service Bulletin (ASB) No. 205–09–102 for the Model 205A and 205A–1 helicopters; ASB No. 205B–09–54 for the Model 205B helicopters; ASB No. 212–09–134 for the Model 212 helicopters; ASB No. 412CF–09–38 for the Model 412CF helicopters; and ASB No. 412–09–136 for the Model 412 and 412EP helicopters.

(ii) Using a 3-power or higher magnifying glass, visually inspect both sides of the T/R blade for any corrosion or pitting in the spar inspection areas as depicted in Figure 1 of the ASB for your model helicopter.

(2) Before further flight:

(i) If you find any corrosion or pitting that is 0.003 inch deep or less, either replace the T/R blade with an airworthy T/R blade or repair the T/R blade.

(ii) If you find any corrosion or pitting that is greater than 0.003 inch deep, replace the T/R blade with an airworthy T/R blade.

(iii) If any parent material is removed during the sanding operation required by paragraph (f)(1)(i) of this AD, either replace the T/R blade with an airworthy T/R blade, or repair the T/R blade if the parent material removed is within the maximum repair damage limits.

(iv) If there is no corrosion or pitting and no damage greater than 0.003 inch deep, refinish the inspection areas and reinstall each T/R blade onto the T/R hub, install the T/R assembly on the helicopter and track and balance the T/R in accordance with the Accomplishment Instructions, paragraphs 8. through 10., of the ASB for your model helicopter.

**(g) Credit for Previous Actions**

Actions accomplished before the effective date of this AD in accordance with AD 2011–12–08 are acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD.

**(h) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, DSCO, FAA, may approve AMOCs for this AD. Send your proposal to: Kuethe Harmon, Safety Management Program Manager, DSCO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5198; email *9-ASW-190-COS@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) Subject**

Joint Aircraft Service Component (JASC) Code: 6410, Tail Rotor Blades.

**(j) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on July 5, 2011 (76 FR 35334, June 17, 2011).

(i) Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) No. 205–09–102, Revision A, dated December 8, 2009.

(ii) Bell Helicopter Textron, Inc. ASB No. 205B–09–54, Revision A, dated December 8, 2009.

(iii) Bell Helicopter Textron, Inc. ASB No. 212–09–134, Revision A, dated December 8, 2009.

(iv) Bell Helicopter Textron, Inc. ASB No. 412CF–09–38, Revision A, dated December 8, 2009.

(v) Bell Helicopter Textron, Inc. ASB No. 412–09–136, Revision A, dated December 8, 2009.

(4) For Bell Helicopter service information identified in this AD, contact Bell Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone 817–280–3391; fax 817–280–6466; or at *https://www.bellcustomer.com.*

(5) You may view this service information at 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.

(6) 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 June 5, 2020.

**Gaetano A. Sciortino,**

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

[FR Doc. 2020–12592 Filed 6–10–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9394]**

**RIN 1545–BD80**

## Special Rules To Reduce Section 1446 Withholding; Correcting Amendment

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to Treasury Decision 9394, which was published in the **Federal Register** on Tuesday, April 29, 2008. Treasury Decision 9394 contained final regulations regarding when a partnership may consider certain deductions and losses of a foreign partner to reduce or eliminate the partnership's obligation to pay withholding tax under section 1446 on effectively connected taxable income allocable under section 704 to such partner.

**DATES:** These corrections are effective on *June 11, 2020,* and applicable as of April 29, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ronald M. Gootzeit at (202) 317–6937 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The final regulations (TD 9394) that are the subject of this correction are under section 1446 of the Code.

### Need for Correction

As published on April 29, 2008 (73 FR 23069), the final regulations (TD 9394; FR Doc. E8–9356) contained errors that need to be corrected.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1446–3 is amended by adding paragraph (b)(2)(i)(B) to read as follows:

**§ 1.1446–3 Time and manner of calculating and paying over the 1446 tax.**

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) *Calculation rules when certificates are submitted under § 1.1446–6*—(*1*) To the extent applicable, in computing the 1446 tax due with respect to a foreign partner, a partnership may consider a certificate received from such partner under § 1.1446–6(c)(1)(i) or (ii) and the amount of state and local taxes permitted to be considered under § 1.1446–6(c)(1)(iii). For the purposes of applying this paragraph (b)(2)(i)(B), a partnership shall first annualize the partner's allocable share of the partnership's items of effectively connected income, gain, deduction, and loss before—

(*i*) Considering under § 1.1446–6(c)(1)(i) the partner's certified deductions and losses;

(*ii*) Determining under § 1.1446–6(c)(1)(ii) whether the 1446 tax otherwise due with respect to that partner is less than $1,000 (determined with regard to any certified deductions or losses); or

(*iii*) Considering under § 1.1446–6(c)(1)(iii) the amount of state and local taxes withheld and remitted on behalf of the partner.

(*2*) The amount of the limitation provided in § 1.1446–6(c)(1)(i)(C) shall be based on the partner's allocable share of these annualized amounts. For any installment period in which the partnership considers a partner's certificate, the partnership must also consider the following events to the extent they occur prior to the due date for paying the 1446 tax for such installment period—

(*i*) The receipt of an updated certificate or status update from the partner under § 1.1446–6(c)(2)(ii)(B) certifying an amount of deductions or losses that is less than the amount reflected on the superseded certificate (see § 1.1446–6(e)(2) *Example 4*);

(*ii*) The failure to receive an updated certificate or status update from the partner that should have been provided under § 1.1446–6(c)(2)(ii)(B); and

(*iii*) The receipt of a notification from the IRS under § 1.1446–6(c)(3) or (5) (see § 1.1446–6(e)(2) *Example 5*).

* * * * *

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2020–11111 Filed 6–10–20; 8:45 am]

**BILLING CODE 4830–01–P**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1614

**RIN 3046–AA97**

### Federal Sector Equal Employment Opportunity

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission (''EEOC'' or ''Commission'') is issuing a final rule that revises its Federal sector complaint processing regulations to address when a complainant may file a civil action after having previously filed an administrative appeal or request for reconsideration with the EEOC. The final rule also contains certain editorial changes.

**DATES:** Effective June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Oram, Assistant Legal Counsel, (202) 663–4681, or Gary J. Hozempa, Senior Staff Attorney, (202) 663–4666, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission. Requests for this document in an alternative format should be made to the EEOC's Office of Communications and Legislative Affairs at (202) 663–4191 (voice) or (202) 663–4494 (TTY).

**SUPPLEMENTARY INFORMATION:**

**Introduction**

On February 14, 2019, the EEOC published in the **Federal Register** a Notice of Proposed Rulemaking (hereinafter ''NPRM'') revising primarily 29 CFR 1614.407 (which pertains to a Federal sector complainant's right to file a civil action). 84 FR 4015 (2019). Currently, 29 CFR 1614.407 provides that an individual complainant, or a class agent or claimant, who has filed an administrative complaint alleging a violation of section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16 (hereinafter ''Title VII''); section 15 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 633a (hereinafter ''ADEA''); or section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 (hereinafter ''Rehabilitation Act''), may file a civil action within 90 days of receipt of the agency final action unless the complainant has filed an appeal with the EEOC, or 180 days after the complaint was filed if an appeal has not been filed and agency final action has not been taken. *See* 29 CFR 1614.407(a) & (b). When an appeal is filed with the EEOC, the current rule states that the complainant may file a civil action: (1) Within 90 days of receipt of the EEOC's final decision on the appeal; or (2) 180 days after the filing of the appeal if the EEOC has not issued a decision within that period. *See* 29 CFR 1614.407(c) & (d).

In *Bullock* v. *Berrien,* 688 F.3d 613, 618–19 (9th Cir. 2012), the court ruled that a Federal employee who had filed an administrative appeal with the EEOC could withdraw the appeal and file a civil action in district court within the 90-day period following receipt of the agency final action. The court reasoned that, because Title VII authorizes a Federal sector complainant to file a civil action ''[w]ithin 90 days of receipt of notice of [agency] final action,'' 42 U.S.C. 2000e–16(c), a complainant is not required to file an appeal with the EEOC before going to court. *See Bullock,* 688 F.3d at 618.

In accordance with *Bullock,* the NPRM proposed changing § 1614.407 to state that a complainant may withdraw an administrative appeal and instead file a civil action if the civil action is filed within 90 days of receipt of the notice of agency final action. The NPRM also proposed revising § 1614.407 to state that a complainant may withdraw a request for reconsideration and proceed to court if the civil action is filed within 90 days of receipt of the EEOC's initial appellate decision. The NPRM provided a 60-day comment period for the public.

**Comments Generally**

The EEOC received twenty comments in response to the NPRM. Comments were received from one agency, three organizations, three attorneys or law firms, and thirteen individuals, some of whom identified themselves as Federal or former Federal employees.

Of the thirteen comments submitted by individuals, four were non-responsive, six supported the proposed

changes, and three individuals expressed opposition. Two organizations and two attorneys opposed the changes proposed in the NPRM. A law firm also disagreed with the proposed revisions and recommended an alternative approach. The agency and one organization supported the changes. The comments are discussed in more detail below.

**Comments Supporting the NPRM**

One individual argued that filing a civil action without first having to file an appeal would be advantageous to complainants, as it would eliminate the 180-day maximum waiting period if an appeal were filed. Three other individuals concluded that the changes to 29 CFR 1614.407 would provide clarity to district court judges, resulting in uniform rulings that a complainant properly is in court if a civil action is filed within 90 days of receipt of the agency final action.

Another individual and an agency supported the proposed changes, stating that the revisions would eliminate what they regard as a barrier to obtaining prompt relief. The agency noted that the revisions will affect only ''the timing of a complainant's ability to exercise their rights; it does not affect the actual exercise of those rights.''

One organization supported the proposed changes because it disagrees with those courts that have dismissed civil actions on the grounds that the complainants failed to exhaust their administrative remedies. It argued that such dismissals place an added burden on complainants, who then must attempt to re-enter the administrative process. It also asserted that the dismissals prevent meritorious cases from being prosecuted, thereby depriving complainants of the relief to which they are entitled. The organization recommended that the EEOC further revise § 1614.407 to state explicitly that a complainant who files a civil action in a manner consistent with the proposed changes has exhausted his or her administrative remedies.

Further, this organization proposed that the EEOC add new sections to the regulation requiring agencies to ''give explicit notice to complainants on how to take cases to federal district court . . .'' at the end of the investigation, when the complainant is given a choice of requesting a hearing before an EEOC Administrative Judge, or a final decision by the agency. Lacking such notice, it argued, complainants are misled into believing that one must request a hearing before being able to proceed to court.

**Comments Opposing the NPRM**

One individual is opposed to the proposed revisions because she believes the changes will encourage complainants to opt out of the administrative process. She and an organization noted that pursuing a civil action, in contrast to pursuing an administrative appeal, is more formal, expensive, time consuming, and intimidating for *pro se* plaintiffs. Another individual and that organization characterized the proposed changes as an attempt by the EEOC to reduce its appellate caseload by steering complainants into the court system.

These two commenters further asserted that the EEOC should not change § 1614.407 based solely on a ruling from a single Circuit Court. Another individual argued that, aside from constituting the only Circuit Court to rule that an administrative appeal is optional, the *Bullock* court ruled the way it did because of the unique set of facts before it—the plaintiff was a former EEOC employee and, in her participation in the EEOC appellate process, she was asking the EEOC to rule against itself. Thus, this individual does not believe *Bullock* provides a convincing rationale for a rule change. Other commenters agreed that the facts in *Bullock* were exceptional given that the EEOC was the defendant. For this reason, four commenters do not believe *Bullock* rests on a solid legal foundation sufficient for other Circuits to find its reasoning persuasive. Their concern is that most of the civil actions filed in reliance on the proposed changes to § 1614.407 will result in dismissals for failure to exhaust administrative remedies.

Two commenters additionally asserted that the proposed changes are at odds with congressional intent, arguing that, in passing section 717 of Title VII, Congress intended complainants to receive relief primarily through the administrative process, thus ensuring that district courts would not be overburdened with adjudicating EEO cases. In a similar vein, two commenters expressed concern that the EEOC has not explained how its proposed changes would further the remedial purposes of Title VII.

One organization expressed concern that, if the proposed changes are made final, the Civil Division of the U.S. Department of Justice (hereinafter ''DOJ'') will continue to argue that a civil action filed by a complainant who also has filed an appeal is premature if it is filed less than 181 days after the appeal. Further, with respect to the proposed revisions to 29 CFR 1614.409 (''effect of filing a civil action''), three commenters asked whether the effect of the change will be that the EEOC will not enforce an appellate decision favorable to the complainant in the event the complainant subsequently files a civil action. One commenter recommended revising § 1614.409 to state that an agency is bound by a final action favorable to the complainant, even if the complainant later files an appeal or a civil action.

A commenter, noting that it has represented Federal sector complainants who have traversed what a district court called a ''Byzantine'' administrative process, opposed the proposed revisions, but mostly on grounds different from those discussed above. It argued that the EEOC's proposed changes to § 1614.407 will render the Federal sector administrative process even more Byzantine. This commenter further maintained that the EEOC's proposed revisions misinterpret section 717(c) of Title VII (which addresses a complainant's right to file a civil action), arguing that, when a complainant has filed an appeal with the EEOC, section 717(c) permits a complainant to file a civil action at any time during the pendency of the appeal, even if that means the complainant files a civil action *more than* 90 days after issuance of the agency's final action. The commenter further suggested that the Commission should revise § 1614.407 to state that a complainant's withdrawal of an appeal or a request for reconsideration constitutes a final administrative decision that triggers the statutory 90-day period for filing a civil action.

**The EEOC's Response to the Comments**

As some of the comments point out, the EEOC was the defendant-agency in *Bullock.* When the plaintiff initially filed her civil action, the EEOC argued, in part, that because plaintiff had previously filed a timely appeal with the EEOC, she had failed to exhaust her administrative remedies. *See Bullock* v. *Dominguez,* 2010 WL 1734964, at *2 (S.D. Cal. April 27, 2010). Relying on section 717(c) of Title VII and 29 CFR 1614.407(c) & (d), the EEOC argued that plaintiff was precluded from filing a civil action until after the Commission issued a decision or 180 days had expired following the filing of her administrative appeal. *See id.* The district court agreed and dismissed plaintiff's civil action as premature. *See id.* at *3. Plaintiff appealed to the Ninth Circuit.

In its initial appellate brief, the EEOC reiterated its position that the plaintiff had failed to exhaust her administrative

remedies. *See Bullock,* 688 F.3d at 615. The Ninth Circuit asked for a supplemental briefing, directing the parties to discuss the Ninth Circuit's decision in *Bankston* v. *White,* 345 F.3d 768 (9th Cir. 2003). *See Bullock,* 688 F.3d at 615.[1] In its supplemental brief, the EEOC asserted that *Bankston* need not be confined to the ADEA context because the EEOC's regulations addressing administrative appeals applied to Title VII, Rehabilitation Act, and ADEA claims equally. *See Bullock,* 688 F.3d at 618. The EEOC thus argued that the plaintiff in *Bullock* had exhausted her administrative remedies and the Ninth Circuit agreed. *See id.,* 688 F.3d at 615.

Thereafter, the EEOC reassessed 29 CFR 1614.407 in light of *Bullock,* and concluded that an appeal to the EEOC is an optional administrative step that a complainant need not take in order to exhaust administrative remedies. The EEOC published the NPRM in accordance with its revised view of the exhaustion issue. Having considered the comments, the EEOC has decided to issue this final rule making only slight changes to the NPRM, as explained below.

The EEOC disagrees that the revised § 1614.407 will encourage complainants to opt out of the administrative process. Nor is it the EEOC's intent to route complainants to state or Federal court. Assuming, as some have suggested, that pursuing a civil action is more formal and expensive than pursuing an administrative appeal, and more difficult for a *pro se* plaintiff to navigate, these factors will discourage most complainants from opting out of the administrative process. Nevertheless, we believe there is a small percentage of complainants who prefer to pursue their claims in court. The EEOC revised § 1614.407 with these complainants in mind.

When a complainant requests a final decision following the completion of an investigation or fails to reply to the notice that the complainant must request a hearing or a final agency decision, the agency must take final action by issuing a final decision. *See* 29 CFR 1614.110(b). If the complainant requests a hearing, the agency must take final action by issuing an order notifying the complainant whether the agency will fully implement the decision of the Administrative Judge. *See id.,* § 1614.110(a). In both situations, the agency's final action must contain a notice informing the complainant of, among other things, his or her right to file an appeal with the EEOC or a civil action in Federal district court. *See id.,* § 1614.110(a) & (b). An appeal to the EEOC must be filed within 30 days of receipt of the agency's final action. *See id.,* § 1614.402(a). Under the current rule, a civil action must be filed within 90 days of receipt of the agency's final action ''if no appeal has been filed.'' *Id.,* § 1614.407(a).

Because a complainant must decide whether to file an appeal within 30 days, the effect of the current regulation is to cause a complainant to decide whether to file a civil action within that same 30-day period, since the current rule allows a complainant to file a civil action only ''if no appeal has been filed.'' Therefore, in practice, the current rule reduces the statutory 90-day time period in which a complainant may file a civil action to 30 days. The revised rule, on the other hand, will afford the complainant the full 90-day statutory period in which to decide whether to go to court, since the complainant will not forfeit that right if he or she, being undecided, timely files an administrative appeal. The Commission believes that giving a complainant the full 90-day period in which to decide whether to go to court advances, rather than impedes, the remedial purposes of the EEO statutes, and preserves all avenues of recourse a complainant is entitled to pursue.

The EEOC also disagrees with the commenters arguing that the EEOC's reliance on *Bullock* to support its revisions as set forth in the NPRM will lead to inconsistencies among the courts regarding the exhaustion issue. As some comments accurately state, there have been courts outside the Ninth Circuit that have held that a complainant who withdraws an appeal and files a civil action less than 180 days after filing an appeal has failed to exhaust administrative remedies. The EEOC has examined these decisions and each court rests its ruling upon section 717(c) of Title VII and the EEOC's current § 1614.407.

The EEOC anticipates that these same courts, as well as others, will show deference to the revised § 1614.407 when presented with a plaintiff who has withdrawn an appeal and filed a civil action within 90 days of receipt of the agency's final action. In this regard, while section 717(c) explicitly sets forth when a complainant's right to file a civil action accrues, it is less clear about when exhaustion of administrative remedies occurs. While section 717(c) allows a complainant to appeal an agency's final action to the EEOC, nothing contained in that section requires that the complainant file an appeal. Given that section 717(c) specifies that a complainant can file a civil action ''[w]ithin 90 days of receipt of notice of final action taken by a[n] . . . agency . . . ,'' section 717(c) cannot be read as creating an exhaustion requirement that a complainant must file an appeal before proceeding in court. Thus, it is the EEOC's position that filing an appeal is an optional, rather than mandatory, administrative step, and that a complainant who initially files an appeal in accordance with the 30-day regulatory deadline may withdraw the appeal and go to court so long as the complainant does so within 90 days of receipt of the agency's final action.

The Commission thus finds merit in one organization's suggestion that a paragraph be added to § 1614.407 stating that a complainant who withdraws an appeal or a request for reconsideration within 90 days of receipt of the agency final action has exhausted his or her administrative remedies. The final rule thus adds a paragraph (g) to § 1614.407 stating that a complainant, class agent, or class claimant who withdraws an appeal or a request for reconsideration and files a civil action within 90 days of receipt of the applicable final action shall be deemed to have exhausted his or her administrative remedies. The Commission finds, however, that the notice requirement suggested by the same commenter is beyond the scope of the NPRM.

Some commenters expressed apprehension that DOJ's Civil Division will not agree with the Commission's revision to § 1614.407, arguing that the Civil Division will seek dismissal of a civil action as premature when filed by a complainant who withdraws an appeal within 90 days of receipt of the agency's final action. Relatedly, one commenter argued that the EEOC's proposed rule should not limit a complainant's right to go to court to the 90-day period following receipt of the agency final action.

Before the EEOC issued the NPRM for public comment, it was circulated to all Federal agencies pursuant to Executive Order 12067. *See* 84 FR at 4016. Section 1614.407 as it appeared in the draft NPRM circulated to the agencies did not mention a 90-day window in which an appeal could be withdrawn and a civil action filed. Most agencies objected to this omission, stating that the rule as

[1] In *Bankston,* the Ninth Circuit held that the plaintiff, who had filed an appeal with the Merit Systems Protection Board concerning his ADEA claim against the Occupational Safety and Health Administration, was not required to see his appeal through to completion or until the lapse of the requisite waiting period, but instead could withdraw his appeal and proceed directly to court. *See Bankston,* 345 F.3d at 776–77.

drafted could be read as allowing a complainant to withdraw an appeal any time after it was filed and instead go to court. The agencies suggested that the revised rule should limit the withdrawal period to the 90-day period following receipt of the agency final action, consistent with the ruling in *Bullock. See* 84 FR at 4016. Most agencies, including DOJ, stated they could support the NPRM if the EEOC revised § 1614.407 as suggested. Thus, before issuing the NPRM for public comment, the EEOC included the 90-day window for filing a civil action, consistent with the agencies' comments. *See* 84 FR at 4017. In light of the agency comments, the EEOC is confident that DOJ will not seek to dismiss a civil action that is filed within 90 days of the plaintiff's receipt of an agency final action, even if the plaintiff previously filed and withdrew an appeal or a request for reconsideration. With the agency comments in mind, the EEOC declines to follow the suggestion of the one commenter that the right to file a civil action not be limited to the 90-day period following receipt of the agency final action.

Finally, with respect to the revisions made to § 1614.409, it has been the long-standing practice of the Commission to cease processing an appeal when the Commission learns that the complainant has filed a civil action. This practice is based on the EEOC's position that a judicial adjudication of a plaintiff's EEO complaint supersedes an administrative decision addressing the same matter, regardless of the outcome of the decisions. The revisions to § 1614.409 reaffirm this long-standing position. Moreover, the EEOC often is not made aware of the fact that a complainant has filed a civil action, resulting in the Commission issuing a decision on an appeal it should have terminated under current § 1614.409. The Commission believes it is necessary to revise § 1614.409 to state that the Commission will not enforce a decision it issues after the complainant has gone to court since the Commission would not have issued the decision had it known the complainant had filed a civil action. This is why revised § 1614.409 encourages complainants to notify the EEOC when the complainant goes to court, so as to enable the EEOC to conserve resources and avoid issuing decisions that are null and void.

**Regulatory Procedures**

*Executive Order 12866*

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review. This rule is not a ''significant regulatory action'' under section 3(f) of the order, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order.

*Executive Order 13771*

This rule is not subject to Executive Order 13771, Reducing Regulation and Controlling Regulatory Cost. Pursuant to guidance issued by the Office of Management and Budget's Office of Information and Regulatory Affairs (April 5, 2017), an ''E.O. 13771 regulatory action'' is defined as ''[a] significant regulatory action as defined in Section 3(f) of E.O. 12866 . . . .'' As noted above, this rule is not a significant regulatory action under section 3(f) of E.O. 12866. Thus, this rule does not require the EEOC to issue two E.O. 13771 deregulatory actions.

*Paperwork Reduction Act*

This rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Regulatory Flexibility Act*

The Commission certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because it applies exclusively to employees and agencies of the Federal Government and does not impose a burden on any business entities. For this reason, a regulatory flexibility analysis is not required.

*Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Congressional Review Act*

This rule does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**List of Subjects in 29 CFR Part 1614**

Administrative practice and procedure, Age discrimination, Equal employment opportunity, Government employees, Individuals with disabilities, Race discrimination, Religious discrimination, Sex discrimination.

For the Commission,

**Janet L. Dhillon,**

*Chair.*

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission amends chapter XIV of title 29 of the Code of Federal Regulations as follows:

## PART 1614—[AMENDED]

■ 1. The authority citation for 29 CFR part 1614 continues to read as follows:

**Authority:** 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16 and 2000ff–6(e); E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

### § 1614.201 [Amended]

■ 2. In § 1614.201, remove paragraph (c).

■ 3. In § 1614.407:

■ a. Revise the section heading.

■ b. In the introductory text, remove the word ''and'' after ''ADEA'' and add in its place a comma and add the words '', and Genetic Information Nondiscrimination Act'' after ''Rehabilitation Act.''

■ c. Revise paragraphs (a) and (b).

■ d. Add paragraphs (e), (f), and (g).

The revisions and additions read as follows:

### § 1614.407 Civil action: Title VII, Age Discrimination in Employment Act, Rehabilitation Act, and Genetic Information Nondiscrimination Act.

* * * * *

(a) Within 90 days of receipt of the agency final action on an individual or class complaint;

(b) After 180 days from the date of filing an individual or class complaint if agency final action has not been taken;

* * * * *

(e) After filing an appeal with the Commission from an agency final action, the complainant, class agent, or class claimant may withdraw the appeal and file a civil action within 90 days of receipt of the agency final action. If the complainant, class agent, or class claimant files an appeal with the Commission from a final agency action

and more than 90 days have passed since receipt of the agency final action, the appellant may file a civil action only in accordance with paragraph (c) or (d) of this section.

(f) After filing a request for reconsideration of a Commission decision on an appeal, the complainant, class agent, or class claimant may withdraw the request and file a civil action within 90 days of receipt of the Commission's decision on the appeal. If the complainant, class agent, or class claimant files a request for reconsideration of a Commission decision on an appeal and more than 90 days have passed since the appellant received the Commission's decision on the appeal, the appellant may file a civil action only in accordance with paragraph (c) or (d) of this section.

(g) A complainant, class agent, or class claimant who follows the procedures described in paragraph (e) or (f) of this section shall be deemed to have exhausted his or her administrative remedies.

■ 4. Revise § 1614.409 to read as follows:

**§ 1614.409 Effect of filing a civil action.**

Filing a civil action under § 1614.407 or § 1614.408 shall terminate Commission processing of the appeal. A Commission decision on an appeal issued after a complainant files suit in district court will not be enforceable by the Commission. If private suit is filed subsequent to the filing of an appeal and prior to a final Commission decision, the complainant should notify the Commission in writing.

**§ 1614.505 [Amended]**

■ 5. In § 1614.505(a)(4), remove the reference ''(b)(2)'' and add in its place ''(a)(3).''

[FR Doc. 2020–10965 Filed 6–10–20; 8:45 am]

**BILLING CODE 6570–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 9

**RIN 2900–AQ98**

## Extension of Veterans' Group Life Insurance (VGLI) Application Period in Response to the COVID–19 Public Health Emergency

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is issuing this interim final rule to extend the deadline for former members insured under Servicemembers' Group Life Insurance (SGLI) to apply for Veterans' Group Life Insurance (VGLI) coverage following separation from service in order to address the inability of members directly or indirectly affected by the 2019 Novel Coronavirus (COVID–19) public health emergency to purchase VGLI. This rule will be in effect for one year.

**DATES:**

*Effective Date:* This interim final rule is effective June 11, 2020.

*Comment Date:* Comments must be received on or before July 13, 2020.

**ADDRESSES:** Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to: Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free telephone number.) Comments should indicate that they are submitted in response to ''AQ98(IF)—Extension of Veterans' Group Life Insurance (VGLI) Application Period In Response To The COVID–19 Public Health Emergency.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free telephone number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Paul Weaver, Department of Veterans Affairs Insurance Service (310/290B), 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842–2000, ext. 4263. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Secretary of Veterans Affairs has authority to prescribe regulations that are necessary or appropriate to carry out the laws administered by VA and that are consistent with those laws. 38 U.S.C. 501(a). Section 1977 of title 38, United States Code, authorizes the VGLI program, which provides former members separating from service with the option of converting existing SGLI coverage into renewable, 5-year term group life insurance coverage in amounts ranging from $10,000 to $400,000 based upon the amount of SGLI coverage. *See* 38 U.S.C. 1967(a), 1968(b)(1)(A), 1977(a), (b). Furthermore, section 1977(b)(5) states that VGLI shall ''contain such other terms and conditions as the Secretary determines to be reasonable and practicable which are not specifically provided for in'' section 1977.

Pursuant to these statutes, VA promulgated 38 CFR 9.2, which provides the effective dates of VGLI coverage and application requirements. VGLI coverage may be granted if an application, the initial premium, and evidence of insurability are received within 1 year and 120 days following termination of duty. 38 CFR 9.2(c). Evidence of insurability is not required during the initial 240 days following termination of duty. *Id.*

On March 13, 2020, President Donald J. Trump issued Proclamation 9994 proclaiming that the 2019 novel Coronavirus (COVID–19) outbreak in the United States constitutes a national emergency beginning March 1, 2020. 85 FR 15337 (Mar. 18, 2020). Because of mitigation strategies to flatten the curve of infections and reduce the spread of COVID–19, the United States economy has been severely impacted, with national unemployment claims reaching historic levels. Proclamation 10014 of April 22, 2020, 85 FR 23441 (Apr. 27, 2020); *see also* Executive Order on Regulatory Relief to Support Economic Recovery (May 19, 2020) (directing agencies to address this economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery). We believe that, as a result of the economic situation, former members, who otherwise may be eligible for VGLI coverage, currently may not be able to afford VGLI coverage or to provide evidence of insurability.

VA is therefore amending 38 CFR 9.2 by adding new subsection (f)(1) to extend by 90 days the time periods under 38 CFR 9.2(c) during which former members may apply for VGLI . Former members who submit a VGLI application and the initial premium within 330 days following separation from service will not be required to submit evidence of insurability. Former members who do not apply for VGLI within 330 days following separation from service may still receive VGLI coverage if they apply for the coverage within 1 year and 210 days following separation from service and submit the initial premium and evidence of insurability. These amendments will ease the financial consequences of the COVID–19 pandemic by extending the time limits for former members to enroll in VGLI, some of whom do not qualify for a private commercial plan of insurance due to their disabilities.

New paragraph (f)(2) establishes a sunset provision for this regulation. Paragraph (f)(1) will not apply one year after the effective date of this rule.

**Administrative Procedure Act**

The Secretary of Veterans Affairs finds that there is good cause to dispense with the opportunity for prior comment with respect to this rule and to make the rule effective upon publication. Pursuant to 5 U.S.C. 553(b)(B), the opportunity for advance public comment is not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The Secretary finds that it is impracticable to delay this regulation for the purpose of soliciting public comment because former members cannot receive VGLI coverage if they do not satisfy the application requirements within the deadlines established by 38 CFR 9.2(c). This 90-day extension is also consistent with extensions private insurers are currently providing for applicants who are currently unable to afford insurance or to submit documents evidencing proof of insurability as a result of the COVID–19 pandemic.

Section 553(d) also requires a 30-day delayed effective date following publication of a rule, except for ''(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule.'' Pursuant to section 553(d)(1), the Secretary finds that this interim final rule should be effective immediately upon publication because this is a substantive rule which relieves restrictions, *i.e.,* extends deadlines for VGLI applications. Also, pursuant to section 553(d)(3), the Secretary finds that there is good cause to make the rule effective upon publication because of the impracticability of delaying implementation the regulatory amendment, as discussed above.

For the foregoing reasons, the Secretary of Veterans Affairs is issuing this rule as an interim final rule with an immediate effective date. The Secretary of Veterans Affairs will consider and address comments that are received within 30 days of the date this interim final rule is published in the **Federal Register**.

**Paperwork Reduction Act**

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

**Executive Orders 12866, 13563, and 13771**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this interim final rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.'' This interim final rule is not expected to be an E.O. 13771 regulatory action because this interim final rule is not significant under E.O. 12866.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The provisions contained in this interim final rulemaking are applicable to individual Veterans, and applications for VGLI, as submitted by such individuals, are specifically managed and processed within VA and through Prudential Insurance Company of America, which is not considered to be a small entity. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule has no such effect on State, local, and tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

**Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

**List of Subjects in Part 9**

Life insurance, Military personnel, Veterans.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on June 5, 2020, for publication.

**Luvenia Potts,**

*Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 9 as follows:

## PART 9—SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

■ 1. The authority citation for Part 9 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1965–1980A, unless otherwise noted.

■ 2. Section 9.2 is amended by adding a new paragraph (f) to read as follows:

**§ 9.2 Effective date; applications.**

* * * * *

(f)(1) If an application, initial premium, or evidence of insurability (as the case may be) has not been received by the administrative office within the time limits set forth in paragraph (c) of this section, Veterans' Group Life Insurance coverage may still be granted if an application, the initial premium,

and evidence of insurability are received by the administrative office within 1 year and 210 days following termination of duty, except that evidence of insurability is not required during the initial 330 days following termination of duty.

(2) Paragraph (f)(1) of this section shall not apply to an application or initial premium received after June 11, 2021.

[FR Doc. 2020–12559 Filed 6–10–20; 8:45 am]

**BILLING CODE 8320–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

**[EPA–R04–OW–2019–0592; FRL–10009–39–Region 4]**

## Ocean Dumping: Cancellation of Final Designation for an Ocean Dredged Material Disposal Site

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) cancels the final designation of the original Wilmington, North Carolina Ocean Dredged Material Disposal Site (ODMDS), referred to as the 1987 Wilmington ODMDS, pursuant to the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended. The 1987 Wilmington ODMDS, which was designated in 1987, is in the Atlantic Ocean offshore Wilmington, North Carolina. This action is being taken because the 1987 Wilmington ODMDS was previously replaced in 2002 by the existing New Wilmington ODMDS and is no longer needed. In addition, this action changes the name of New Wilmington ODMDS to the Wilmington, North Carolina ODMDS.

**DATES:** This rule is effective July 13, 2020.

**ADDRESSES:** *Docket:* All documents in the Docket are listed in the *www.regulations.gov* 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, will be publicly available or in hard copy at the EPA Region 4 Office, 61 Forsyth Street SW, Atlanta, Georgia 30303. The file will be made available for public inspection in the Region 4 library between the hours of 9:00 a.m. and 4:30 p.m. weekdays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below to make an appointment. If possible, please make your appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents.

**FOR FURTHER INFORMATION CONTACT:** Gary W. Collins, U.S. Environmental Protection Agency, Region 4, Water Division, Oceans and Estuarine Management Section, 61 Forsyth Street, Atlanta, Georgia 30303; phone number: (404) 562–9395; email: *collins.garyw@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval to dispose of dredged material into ocean waters pursuant to the MPRSA (33 U.S.C. 1401 *et seq.*), 33 U.S.C. 1401 to 1445. The EPA's action would be relevant to persons, including organizations, and government bodies seeking to dispose of dredged material in ocean waters offshore of Wilmington, North Carolina. Currently, the U.S. Army Corps of Engineers (USACE) would be most affected by this action. Potentially affected categories and persons include:

| Category | Examples of potentially regulated persons |
|---|---|
| Federal Government | U.S. Army Corps of Engineers Civil Works projects, U.S. Navy and other Federal agencies. |
| Industry and general public | Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners. |
| State, local and tribal governments | Governments owning and/or responsible for ports, harbors, and/or berths, government agencies requiring disposal of dredged material associated with public works projects. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### II. Background

Section 102(c) of the MPRSA, 33 U.S.C. 1412(c), gives the Administrator of the EPA authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This cancellation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA at 40 CFR 228.11, state that modifications in disposal site use which involve withdrawal of disposal sites from use will be made by promulgation pursuant to 40 CFR part 228. This site cancellation is being published as final rulemaking in accordance with 40 CFR 228.11(a) of the Ocean Dumping Regulations, which permits the withdrawal of designated disposal sites from use based upon changed circumstances concerning use of the site.

### III. Action

The cancellation of the designation of the ODMDS, which was designated offshore Wilmington, North Carolina, in 1987 at 40 CFR 228.15(h)(2), is needed as a housekeeping measure. This 1987 Wilmington ODMDS is no longer a suitable disposal option and has no foreseeable need. The 1987 Wilmington ODMDS was replaced by the larger New Wilmington ODMDS, which was designated in 2002 at 40 CFR 228.15(h)(20), due to changes in alignment of the Federal navigation channel, which now cuts through the 1987 ODMDS, and for other applicable reasons. In this action, the EPA also changes the name of the New Wilmington ODMDS to the Wilmington, North Carolina ODMDS.

On November 6, 2019, the EPA issued a draft rule for public review and comment in the **Federal Register** [84 FR 59744 (Nov. 6, 2019)] which proposed the cancelation of the designation of the 1987 Wilmington ODMDS and renaming the New Wilmington ODMDS to the Wilmington, North Carolina ODMDS. Four comments were received on the proposed rule. Of the four comments, two were not related to this action and do not need responses. Of the two remaining comments, one stated that ODMDS designations seem to trend toward a pattern of moving further and further offshore which the individual attributes to improper long-term planning by the EPA. The second comment stated that ''[s]ome evidence showed that shrimpers have complained that wood debris attributed to dredged

materials placed within the [1987 Wilmington ODMDS] interfere with shrimping.''

Regarding the issue of long-term planning, the EPA historically designates sites that are environmentally suitable, minimizes the haul distance and associated costs, and maximizes the feasibility and ease for monitoring while considering the known longer-term needs of federally authorized projects. With the recent improvements to the Panama Canal, nearly every port in the southeastern U.S. has proceeded with plans to deepen and widen navigation channels for federally authorized projects, as well as all the associated turning basins and terminal berthing areas. Prudent use of the Agency's resources does not allow for planning beyond the known needs of the major site users at any given time and thus the site designated in 1987 was not designated with adequate capacity to meet the current need.

The EPA understands that the comment regarding wood debris in dredged material and its interference with shrimping is referencing historical events that occurred at shrimping grounds that lie offshore of Frying Pan Shoals. In 1987–1988, shrimp fishermen operating in areas outside the 1987 Wilmington ODMDS had reported fouling and tearing of their nets with roots, tree limbs, and other natural origin wood debris. The fishermen attributed the wood debris to ''short dumped'' (*i.e.,* outside the disposal area) ocean disposal of dredged material from the ''river'' reaches of the Wilmington Harbor navigation channel as well as reaches of the Military Ocean Terminal Sunny Point (MOTSU). To remedy this, the dredging contractor at the time conducted a cleanup of the impacted areas using heavy-duty scallop-style nets for 20 days (approximately 228 tows were made). In an effort to maximize the distance from the disposal location to the shrimp fishing area, between 1988 and 2002, dredged materials from river sources were placed in the most seaward (southern) half of the 1987 Wilmington ODMDS. However, in 1996, fishermen complaints regarding wood debris in areas near the 1987 Wilmington ODMDS were again received. In July 1996, the USACE Wilmington District employed two trawlers to drag heavy-duty nets in the shrimp-trawling areas in order to assess the wood debris problem. This USACE determined that wood debris was present in the traditional shrimping bottoms in sufficient amounts to interfere with shrimping but the USACE was unable to determine the source of the wood debris. The contention that the dredged material placed in the 1987 Wilmington ODMDS was a source of the wood debris impacting shrimpers' towing bottoms was neither confirmed nor denied. Extreme weather events, including hurricanes, periodically pass over the 1987 Wilmington ODMDS and surrounding areas and may naturally redistribute debris on the sea floor, regardless of their source. The 1987 Wilmington ODMDS, currently inactive, has not received dredged material since 2002. There are no plans to remove any wood debris or other material from the 1987 Wilmington ODMDS; rather, the 1987 Wilmington ODMDS footprint will be allowed to continue its transition back to a more natural state as it has been for the past 18 years. Since its designation in 2002, all dredged materials originating from Wilmington Harbor and MOTSU have been placed in the New Wilmington ODMDS. The New Wilmington ODMDS is located further seaward (south) than the 1987 Wilmington ODMDS, and was specifically sited to keep disposal operations and any wood debris that might be associated with the dredged material as far as possible from these shrimping grounds while maintaining the economic feasibility of federally authorized projects that require the transport and disposal of dredged material.

## IV. Statutory and Executive Order Reviews

This action complies with applicable Executive orders and statutory provisions as follows:

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

*b. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action does not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

*c. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.,* or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business defined by the U.S. Small Business Administration's size regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of this rule, the EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities.

*d. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.,* for state, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any state, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of Sections 202 or 205 of the UMRA. This action is also not subject to the requirements of Section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities.

*e. Executive Order 13132: Federalism*

This action does not have federalism implications. It does not have substantial direct effects on States, on the relationship between the Federal Government and States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. The EPA specifically solicited comment on this action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175, because the action will not have a direct effect on 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. Thus, Executive Order 13175 does not apply to this action. The EPA specifically solicited additional comments on this action from tribal officials.

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

The EPA interprets Executive Order 13045 (62 FR 19885) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the Executive order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211 (66 FR 28355) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

*i. National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 3701 *et seq.*), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action is only cancelling the designation of an ODMDS which is no longer viable.

**List of Subjects in 40 CFR Part 228**

Environmental protection, Water pollution control.

**Authority:** This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1412.

**Mary Walker,**

*Regional Administrator, Region 4.*

For the reasons set out in the preamble, The EPA amends chapter I, title 40 of the Code of **Federal Register** as follows:

## PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

■ 1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

■ 2. Section 228.15 is amended by removing and reserving paragraph (h)(2) and revising paragraph (h)(20) introductory text to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

* * * * *

(h) * * *

(20) Wilmington, North Carolina; Ocean Dredged Material Disposal Site.

* * * * *

[FR Doc. 2020–11029 Filed 6–10–20; 8:45 am]

**BILLING CODE 6560–50–P**

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### National Endowment for the Humanities

### 45 CFR Part 1168

**RIN 3136–AA39**

### Implementing the Federal Civil Penalties Adjustment Act Improvements Act of 2015

**AGENCY:** National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

**ACTION:** Final rule.

**SUMMARY:** The National Endowment for the Humanities (NEH) is adopting as final, without change, its interim final rule that adjusted the civil monetary penalties NEH may impose for violations of its New Restrictions on Lobbying regulation, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act).

**DATES:** *Effective date:* This final rule is effective on June 11, 2020. *Applicability date:* The adjusted penalty amounts will apply to penalties assessed on or after January 15, 2020 if the associated violations occurred after November 2, 2015.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *gencounsel@neh.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 21, 2020, NEH published in the **Federal Register** an interim final rule to adjust the civil penalties found in its New Restrictions on Lobbying regulation (45 CFR part 1168) pursuant to the 2015 Act. (*See* 85 FR 22025).

For each regulation that imposes a civil monetary penalty, the 2015 Act requires agencies to: (1) Adjust the level of civil monetary penalties with an initial ''catch-up'' inflation adjustment through an interim final rulemaking; and (2) make subsequent annual adjustments for inflation. The formula for the amount of a civil monetary penalty inflation adjustment is prescribed by law, as explained in Office of Management and Budget (OMB) Memorandum M–16–06 (February 24, 2016).

NEH's interim final rule, which implemented the initial ''catch-up'' inflation adjustment and the 2020

inflation adjustment, took effect on April 21, 2020. NEH notified the public that it would accept comments on the interim final rule for thirty (30) days after publication, until May 21, 2020. By that date, NEH did not receive any comments. Therefore, NEH is adopting the interim final rule as final, without change.

**Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review**

This action is not a significant regulatory action and was therefore not submitted to OMB for review. NEH conducted the required assessment under Executive Orders 12866 and 13563 for the interim final rule and this rule finalizes that regulation without change.

**Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs**

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

**Executive Order 13132, Federalism**

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

**Executive Order 12988, Civil Justice Reform**

This rulemaking meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rule is written in clear language designed to help reduce litigation.

**Executive Order 13175, Indian Tribal Governments**

Under the criteria in Executive Order 13175, NEH evaluated this rule and determined that it will not have any potential effects on federally recognized Indian Tribes.

**Executive Order 12630, Takings**

Under the criteria in Executive Order 12630, this rulemaking does not have significant takings implications. Therefore, a takings implication assessment is not required.

**Regulatory Flexibility Act of 1980**

This rulemaking will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

**Paperwork Reduction Act of 1995**

This rulemaking does not impose an information collection burden under the Paperwork Reduction Act. This action contains no provisions constituting a collection of information pursuant to the Paperwork Reduction Act.

**Unfunded Mandates Reform Act of 1995**

This rulemaking does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year.

**National Environmental Policy Act of 1969**

This rulemaking will not have a significant effect on the human environment.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rulemaking will not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**E-Government Act of 2002**

All information about NEH required to be published in the **Federal Register** may be accessed at *www.neh.gov.* The website *https://www.regulations.gov* contains electronic dockets for NEH's rulemakings under the Administrative Procedure Act of 1946.

**Plain Writing Act of 2010**

To ensure this final rule was written in plain and clear language so that it can be used and understood by the public, NEH modeled the language of this rule on the Federal Plain Language Guidelines.

**List of Subjects in 45 CFR Part 1168**

Administrative practice and procedure, Lobbying, Penalties.

## PART 1168—NEW RESTRICTIONS ON LOBBYING

■ Accordingly, NEH adopts the interim final rule amending 45 CFR part 1168, which was published at 85 FR 22025 on April 21, 2020, as final without change.

Dated: May 22, 2020.

**Caitlin Cater,**

*Attorney-Advisor, National Endowment for the Humanities.*

[FR Doc. 2020–11440 Filed 6–10–20; 8:45 am]

**BILLING CODE 7536–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 11, 73, and 74

**[MB Docket Nos. 19–193 and 17–105; FCC 20–53; FRS 16740]**

### Low Power FM Radio Service Technical Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) adopts a Report and Order (Order) to improve technical rules that primarily affect Low Power FM (LPFM) radio stations.

**DATES:** Effective July 13, 2020, except for the changes to §§ 73.816, 73.850, and 73.870, which are delayed. The Commission will published a document in the **Federal Register** announcing the effective date.

**FOR FURTHER INFORMATION CONTACT:** Irene Bleiweiss, Media Bureau, Audio Division, (202) 418–2785, or via the internet at *Irene.Bleiweiss@fcc.gov.* Direct press inquiries to Janice Wise at (202) 418–8165, or via the internet at *Janice.Wise@fcc.gov.* For additional information concerning the Paperwork Reduction Act (PRA) information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the internet at *Cathy.Williams@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order, in MB Docket Nos. 19–193 and 17–105, FCC 20–53, adopted and released on April 23, 2020. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website *https://www.fcc.gov/ecfs/filing/0423300323576* or by downloading the text from the Commission's website at website at *http://fjallfoss.fcc.gov/ecfs2/.* (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).

**Final Paperwork Reduction Act of 1995 Analysis**

The Report and Order in document FCC 20–53 contains modified information collection requirements, which are not effective until approval is obtained from OMB. The Commission, as part of its continuing effort to reduce paperwork burdens, has invited the general public to comment on these information collection requirements as required by the PRA (85 FR 34440, June 4, 2020). The Commission will publish a separate document in the **Federal Register** announcing approval of the information collection requirements. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might ''further reduce the information burden for small business concerns with fewer than 25 employees.'' *See Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules,* MB Docket Nos. 19–193, 17–105, Notice of Proposed Rulemaking, 84 FR 49205 (Sept. 19, 2019), 34 FCC Rcd 6537 (2019) (NPRM).

**Congressional Review Act**

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

**Synopsis**

1. *Introduction.* On April 23, 2020, the Commission adopted a Report and Order (Order), Amendment of Parts 73 and 74 of the Commission's Rules to Improve the Low Power FM Radio Service Technical Rules; Modernization of Media Regulation Initiative; FCC 20–53, MB Docket Nos. 19–193, 17–105. The Order revises the technical rules governing the Low Power FM (LPFM) service in order to improve LPFM reception and increase flexibility in transmitter siting while maintaining interference protection and the core LPFM goals of diversity and localism.

2. The Commission proposed to modify the LPFM technical rules in an NPRM published at 84 FR 49205 (Sept. 19, 2019). The rule changes adopted in the Order modify the rules in four main ways: (1) Expanding the permissible use of directional antennas; (2) expanding the definition of minor change applications for LPFM stations; (3) allowing LPFM stations to own FM boosters; and (4) permitting LPFM and Class D FM stations operating on the FM reserved band (channels 201 to 220) reserved band (channels 201 to 220) to propose facilities short-spaced to television stations operating on channel 6 (TV6) with the consent of the potentially affected stations. With respect to TV6, the Order also establishes an interim process for reserved channel LPFM, noncommercial educational (NCE) FM, Class D (10 watt) FM, and FM translator stations to request waivers of TV6 protections upon showing of no interference, until the Commission further addresses TV6 protection requirements in a separate proceeding. The Order also adopts several other rule revisions and clarifications. Specifically, the Order allows co-located LPFM stations to share Emergency Alert System decoders; clarifies silent station notification requirements; affirms that LPFM transmitters must be certified; and makes small, non-substantive wording changes to the rules. The goal of the Order is to provide LPFM stations with greater flexibility, to improve their service, to remove regulatory burdens, and to continue efforts to modernize media regulations.

3. *Directional Antennas.* The Commission amends § 73.816 of its rules (Rules) to expand the optional use of directional antennas in the LPFM service, including custom-designed models. In response to concerns by some full-power broadcasters about potential interference to their stations from directional LPFM antennas, the Order requires LPFM stations using directional antennas to submit proof of performance studies with their license applications to verify proper installation and operation. However, in response to concerns of LPFM stations that proof studies are costly and sometimes unnecessary, the Order exempts three types of proposals that have other, existing interference protections. The Commission expects that expanded use of directional antennas would primarily assist LPFM licensees constructing stations near the borders with Canada and Mexico, and exempts such applications from the proof of performance requirement because existing international agreements contain provisions for interference remediation.

4. *Redefine Minor Changes.* The Order amends § 73.870 to expand the definition of a ''minor'' LPFM facility change. An LPFM station making a ''minor'' change to its transmitter site may relocate without awaiting the opening of a filing window. Prior to the rule change, LPFM modifications qualified as minor if they did not exceed 5.6 kilometers, based on the fact that LPFM stations typically have 60 dBu service contours with a radius of slightly more than 5.6 kilometers and that a station moving 5.6 kilometers would, thus, continue to serve at least part of the same area. The Order recognizes that because the contours of two such facilities can also be expected to overlap at double that distance (11.2 kilometers), LPFM site changes should be allowed up to 11.2 kilometers, or up to any greater distance that would result in overlapping 60 dBu service contours between the existing and relocated facilities. This approach will provide LPFM stations more opportunities to relocate, provided that the relocated station would continue to serve part of the area served by the existed station.

5. *Cross-Ownership of FM Booster Stations.* The Commission amends § 73.860 to allow cross-ownership of LPFM stations and FM boosters. Generally, LPFM licensees may not own non-LFPM stations. There is, however, a limited exception allowing non-Tribal LPFM licensees to operate up to two FM translator stations if they meet certain requirements. The amendment to § 73.860 establishes guidelines for potential booster use by LPFM stations in lieu of use of an FM translator. Under the revised rule, an LPFM station can rebroadcast its signal on up to two FM translators, up to two FM boosters, or one of each, provided that the LPFM station's service area must overlap that of a co-owned FM translator, and must entirely encompass that of a co-owned booster. Booster stations could receive the signal of the commonly-owned LPFM station by any means authorized in § 74.1231(i), the rule that applies to all FM booster stations. Use of FM boosters may improve LPFM reception in areas with irregular terrain.

6. *Protecting TV Channel 6 Television Stations.* The Commission defers to a separate proceeding whether to eliminate entirely the requirements that LPFM, Class D, NCE FM, and FM translator stations on the FM reserved band protect television stations operating on adjacent television channel 6 (TV6). The Commission will be in a better position to reach an informed decision on TV6 issues when there is a more developed record about what impact, if any, eliminating TV6

protections would have once all television stations have transitioned from analog to digital, an ongoing process that will not be complete until July 13, 2021. Consistent with the Commission's proposal to grant some earlier relief, the Order amends §§ 73.825 and 73.512 to exempt reserved band LPFM and Class D applicants from TV6 protection requirements where the applicant provides an agreement indicating the concurrence of all potentially affected TV6 stations. That revision will afford LPFM and Class D applicants the same opportunity for exemption that currently exists for NCE FM and FM translator applicants. Also, until the Commission issues a TV6 decision in a separate proceeding, the Commission will consider waiver requests from LPFM, Class D, NCE FM, and FM translator applicants seeking to construct facilities that are short-spaced to TV6. Applicants will be required to certify that they served the application and waiver request on the affected TV6 station. The Commission will review these waiver requests and any petitions to deny and informal objections on a case-by-case basis and grant such requests if the applicant demonstrates no interference.

7. *Miscellaneous Issues.* The Order makes several additional changes and rejects others. The Order retains the requirement that LPFM stations participate in the Emergency Alert System (EAS) but modifies § 11.52(c) to allow shared EAS decoder use by LPFM stations that are co-located but not co-owned. LPFM licensees seeking to share a decoder must enter into a written agreement that ensures that each has access to the co-located equipment; and acknowledges that each party to the agreement remains fully and individually responsible for compliance with all EAS rules and any EAS violations involving the shared equipment.

8. The Order modifies § 73.850 to clarify that LPFM stations, like all broadcast stations, must notify the Commission if they are silent 10 days and seek consent to remain off the air for 30 days or more. Such notifications allow the Commission to assist stations return to the air before their licenses expire as a matter of law as a result of the extended silence. The Order also makes a non-substantive change to § 73.810, the rule governing LPFM third-adjacent channel interference, so that its language will track changes to FM translator rules made in another proceeding, thereby clarifying that LPFM stations and FM translator stations must protect the same stations. Finally, the Order eliminates repetitive language from § 73.871(c) concerning ''minor'' amendments and removes an outdated web page address from § 74.1290.

9. The Commission rejects several additional proposals from LPFM organizations. First, the Commission declines to increase the maximum power of LPFM stations from 100 watts to 250 watts. The Commission had tentatively rejected a power increase proposal in the NPRM, as inconsistent with the Local Community Radio Act (LCRA) and with the simple design of the LPFM service. Commenters submitted two revised power-increase proposals but the Commission found that the first did not fully solve the LCRA/complexity issues and that the second was submitted too late to be considered in the current proceeding.

10. The Order also declines to impose any new requirements on stations hosting radio reading services for the blind. LPFM applicants sought such requirements so that the Commission might compile lists of such stations that LPFM applicants must protect, but the Commission stated that the accuracy of any such list would be short-lived and that other resources exist for obtaining the same information. The Order further rejects a commenter suggestion to allow LPFM stations to protect FM translators in the same way that FM translators protect LPFM stations, *i.e.,* with contour protections and interference remediation requirements. Such a change would alter the simplicity of LPFM licensing.

11. The Commission declines to alter the § 73.1660(a) requirement that LPFM transmitters be certified, *i.e.,* approved by the Commission based on data that is generally submitted by the equipment manufacturer. LPFM transmitters must be specifically certified for LPFM use because not all equipment is suitable to operate at the lower parameters in the LPFM service. The Commission also rejects a suggestion that LPFM stations be permitted to shorten their call signs by dropping the ''-LP'' suffix. The suffix is important for official Commission purposes because it allows anyone who wishes to contact the Commission about the station's operations to readily ascertain the station's identity, in a format unique to that facility, and to generate information about the correct station from the Commission's online databases.

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM to this proceeding. *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (CWAAA). The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. The Commission received one comment referencing language in the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

### *A. Need For, and Objectives of, the Report and Order*

2. This *Report and Order* adopts several rule changes that are intended to improve the public's reception of Low Power FM (LPFM) broadcast station signals and to provide greater flexibility to LPFM broadcasters. Specifically, in the *Report and Order* the Commission adopts new rules and procedures to: (1) Expand the class of LPFM licensees able to use directional antennas and allows LPFM use of antennas beyond off-the-shelf models; (2) allows LPFM and Class D stations to, like FM translators and full-service FM stations operating on Channels 201 to 220 (reserved band) not protect television stations operating on Television Channel 6 if they obtain concurrence from the TV6 station, or alternatively to request a waiver of the requirement; (3) redefine a ''minor change'' for LPFM stations as one which either: (a) Does not exceed 11.2 kilometers (doubling the simple standard currently in use); or (b) involves overlapping 60 dBu contours of the station's own existing and proposed facilities (a new standard that would generally be used by stations unable to meet the 11.2 kilometer distance and that would be more costly because it would require an engineering study); (4) permit LPFM stations to retransmit LPFM signals over booster stations (which amplify and reradiate the signal) as a substitute for currently permissible use of FM translators (which retransmits the signal on a different channel without amplification); (5) allow co-located LPFM stations to reduce operating costs by sharing a single Emergency Alert Service (EAS) decoder; (6) update LPFM-related rules in Parts 73 and 74 to make non-substantive changes to conform the rule governing LPFM third-adjacent channel interference, remove repetitive language and outdated information; and (7) require that LPFM stations, like all other broadcast stations, must notify the Commission if they stop broadcasting for ten days and request authority to

remain off-air for longer than 30 days. The new rules and procedures are designed to provide stations with more options to relocate and to improve their signals by having the opportunity to use more sophisticated equipment. These changes may improve the public's ability to receive signals from low-powered stations, especially in areas with irregular terrain and near international borders. The changes may also provide LPFM applicants greater flexibility in identifying initial and modified transmitter locations. The Commission's objectives are to improve LPFM reception and increase flexibility in LPFM siting while protecting primary stations and pre-existing secondary stations from interference and maintaining the core LPFM goals of diversity and localism.

*B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

3. Las Vegas Public Radio Inc. (LVPR), licensee of KIOF–LP, Las Vegas, Nevada, filed comments citing to the IRFA's recognition that LPFM stations are small entities. LVPR's primary concern is that the Corporation for Public Broadcasting (CPB) has denied its yearly applications for Community Service Grant funding. LVPR characterizes CPB's actions as ''anti-competitive business practices'' that favor ''dominant'' full-power NCE FM stations over smaller LPFM stations. LVPR contends that the IRFA's classification of LPFM stations as small businesses is consistent with that argument. *See* LVPR Comments at 2 (rec. Aug. 22, 2019); LVPR Reply at 2 (rec. Sept. 16, 2019); *see also* LVPR Further Comments at 1–2 (rec. Nov. 5, 2019). The Commission neither provides financial support for broadcasters nor participates in the CPB funding process. LVPR's concern is not related to how the Commission's proposed rules would affect small entities and, therefore, is beyond the scope of this proceeding. LVPR also argues that the Commission's tentative decision not to increase the 100-watt maximum EFR of LPFM stations will prevent business growth. LVPR Comments at 2 (rec. Aug. 27, 2019); LCPR Comments at 2 (rec. Aug. 29, 2019). The reasoning behind the Commission's decision on this matter is fully discussed in section III(F) of the *Report and Order. See Report and Order, supra* at paras. 36–41.

*C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration*

4. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. 5 U.S.C. 604(a)(3). The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

*D. Description and Estimate of the Number of Small Entities to Which the Rules Apply*

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' *Id.* section 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. *Id.* section 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' *Id.* section 601(3). 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. *Id.* section 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission's statistical account of television stations may be over-inclusive.

6. The new rules will apply primarily to applicants, permittees, and licensees within the LPFM service. Because LPFM stations operate on the same spectrum as FM translator stations but under different technical requirements, the changes to the LPFM requirements could have a secondary impact on FM translator applicants and licensees. Specifically, the rule changes may enable LPFM stations to operate in more locations, making it necessary for subsequent FM translator applicants to protect those additional locations. Although the Commission is deferring action on a proposal to eliminate the requirement that radio stations in the FM reserved band protect adjacent television stations operating on Television Channel 6 (TV6), it is reducing the burden on small businesses by entertaining requests for waiver of this requirement. Below, we provide a description of these small entities, as well as an estimate of the number of such small entities, where feasible.

7. *Low Power FM Stations.* The *Report and Order* make relatively small rule adjustments that will primarily affect licensees and potential licensees of LPFM stations. LPFM stations are classified as radio broadcast stations. Business concerns included in this industry are those primarily engaged in broadcasting aural programs by radio to the public. *See* 13 CFR 121.201, NAICS Code 515112. The SBA defines a radio broadcast station as a small business if such station has no more than $41.5 million in annual receipts. *Id.* Given the nature of the LPFM service, in which eligibility is limited to non-profit organizations based in the community (typically small, volunteer-run groups), governments, and tribal applicants, we will presume that all LPFM licensees and applicants qualify as small entities under the SBA definition. 47 CFR 73.853, 73.860.

8. While the U.S. Census provides no specific data for these stations, the Commission has estimated the number of licensed low power FM stations to be 2,169. *Broadcast Station Totals as of December 31, 2019,* FCC News Release (rel. Jan. 3, 2020) (*Broadcast Station Totals*), *https://docs.fcc.gov/public/attachments/DOC-361678A1.pdf.* This estimate may overstate the number of potentially affected licensees because existing LPFM stations that do not seek to modify their facilities would not be affected. The estimate may also be an overstatement because some of the proposals would affect only stations to be located in particular geographic regions (directional antenna use near borders with Canada and Mexico), in certain topography (booster station use to overcome terrain obstacles), or on certain channels (because TV6 protections do not apply to LPFM stations operating on spectrum other than FM Channels 201 to 220). With respect to applicants in future filing windows, we anticipate that we will

receive a number of applications similar to past filing windows and that all applicants will qualify as small entities. The last LPFM filing window in 2013 generated approximately 2,827 applications.

9. *NCE FM Radio Stations.* The potential waiver of TV6 protection policies applies to reserved band NCE FM radio broadcast licensees, and potential licensees of NCE FM radio service. This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' U.S. Census Bureau, 2012 NAICS Definitions, ''515112 Radio Stations,'' at *http://www.census.gov/cgi-bin/sssd/naics/naicsrch*. This category description continues: ''Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA has created the following small business size standard for this category: Those having $41.5 million or less in annual receipts. 13 CFR 121.201; NAICS code 515112. Census data for 2012 show that 2,849 firms in this category operated in that year. U.S. Census Bureau, Table No. EC0751SSSZ4, *Information: Subject Series—Establishment and Firm Size: Receipts Size of Firms for the United States: 2012* (515112), *http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table*. Of this number, 2,806 firms had annual receipts of less than $25 million, and 43 firms had annual receipts of $25 million or more. *Id.* Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $41.5 million in that year, we conclude that the majority of radio broadcast stations were small entities under the applicable SBA size standard. In addition, the Commission has estimated the number of NCE FM radio stations to be 4,135. *Broadcast Station Totals* at 1. Because NCE licensees must be non-profit, we will presume that all are small entities.

10. *FM Translator Stations.* The changes adopted herein will affect licensees of FM translator stations, as well as potential licensees in these stations. The same SBA definition that applies to radio stations applies to FM Translator stations. As noted, the SBA has created the following small business size standard for this category: Those having $41.5 million or less in annual receipts. 13 CFR 121.201, NAICS Code 515112. In addition, as of December 31, 2019, there were a total of 8,182 FM translator and FM booster stations. *Broadcast Station Totals* at 1. We anticipate that in future FM Translator filing windows we will receive a number of applications similar to past filing windows and that all applicants will qualify as small entities. The 2003 FM translator filing window generated approximately several hundred applications from NCE applicants.

11. *Channel 6 Television Stations.* The Report and Order modifies the LPFM rules to specify that LPFM and Class D (10 watt) FM stations can propose operations that do not fully protect TV6 stations if the TV6 station concurs. Such language already exists for other types of reserved band FM stations. Thus, the Report and Order would affect Television Broadcasting firms on TV6. This economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.'' U.S. Census Bureau, *2012 NAICS Code Economic Census Definitions, https://www.census.gov/cgi-bin/sssd/naics/naicsrch*. The SBA defines Television Broadcasting firms as small businesses if they have $41.5 million or less in annual receipts. 13 CFR 121.201; NAICS code 515120. The 2012 economic Census reports that 751 television broadcasting firms operated during that year. Of that number, 656 had annual receipts of less than $25 million per year. Based on that Census data we conclude that a majority of firms that operate television stations are small. Approximately nine full-power television stations and about 117 LPTV and TV translator stations (54 analog and 63 digital) currently operate on Channel 6. Ten additional low power television stations that were displaced by an Incentive Auction process hold permits to move to Channel 6 in the future, but those operations will be digital rather than analog. We will presume that all of these Channel 6 television stations are small businesses.

### *E. Description of Projected Reporting, Record Keeping and Other Compliance Requirements*

12. The rule changes adopted in the *Report and Order* will, in some cases, impose different reporting requirements on LPFM applicants for new, modified, and/or licensed but silent facilities. Applicants seeking modifications will be able to demonstrate that their proposals are ''minor'' by submitting a different type of showing as an alternative to the current distance-based requirement, which will remain available. We expect that the alternative, while more costly, will enable more organizations to apply for authority to modify their facilities without having to wait for a filing window. LPFM stations that choose to operate co-owned FM boosters would include the booster on bi-annual ownership reports. We expect this additional burden with respect to ownership reports to be minimal because LPFM stations would generally not operate a booster unless they are experiencing unique terrain issues. An LPFM permittee choosing to use a directional antenna not subject to an exception would submit a proof of performance study with its application for a covering license, a safeguard that ensure that the equipment is operating properly and would not cause interference. We expect this additional burden concerning directional antennas to be minimal because it will affect only a small portion of LPFM applicants. It is likely that the new directional antenna option will be used primarily by those constructing stations near the borders with Canada and Mexico to comply with bilateral agreements that already contain interference remediation provisions. Licensed LPFM stations that limit or discontinue operations would have to notify the Commission by the tenth day and request authority for the any limited or discontinued operations exceeding 30 days. The notification could be accomplished by a brief letter. The request for authority exceeding 30 days can be done by letter or brief electronic submission. We expect this additional burden concerning limited or discontinued operations to affect only a small portion of LPFM licensees, *i.e.,* those experiencing significant technical difficulties lasting at least ten or thirty days, respectively. LPFM stations generally already file such requests as a matter of practice, because such information is explicitly required for other broadcast stations.

### *F. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered*

13. 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 or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from

coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1)–(c)(4).

14. The rules adopted herein are intended to assist LPFM broadcast stations and applicants, which we presume are all small entities, by providing them with additional options that could increase coverage and choice of sites. For example, doubling the distance that a station can move from its existing site, as a ''minor'' change will allow the station to consider additional siting options. Allowing stations near international borders to use directional antennas could increase coverage in the direction away from the border while complying with international agreements that limit coverage close to the border. The rules enable LPFM organizations: (1) To use directional antennas including custom and composite antennas; (2) to double (from 5.6 kilometers to 11.2 kilometers) the distance that an LPFM station can move as a ''minor change'' without awaiting an application filing window or, alternatively, to demonstrate contour overlap between their existing and proposed facilities; (3) to retransmit LPFM signals over booster stations; and (4) to use a single EAS decoder with a co-located LPFM station. The Commission would relieve LPFM and Class D (10 watt) reserved band FM radio stations of the requirement to protect television stations operating on TV6 if the TV6 station concurs. The Commission recognizes that the TV6 stations are also small entities. We believe that there will not be any negative impact on such television stations because the option to concur would be voluntary. The Commission invited and has considered alternatives including alternatives to minimize the burden on small businesses. The majority of the commenters supported the Commission's proposals. The *Report and Order* adopts one commenter-suggested alternative by doubling the distance that meets the definition of a ''minor change'' from 5.6 to 11.2 kilometers. That alternative will make it easier for small entities to benefit from the new definition by using a simple, enlarged distance standard that does not require a more costly engineering analysis. With respect to directional antennas the Commission adopted, in part, a commenter suggestion to limit the situations in which directional LPFM facilities would be required to submit a proof of performance. In most situations, the Commission will not require proofs, which can be costly. It will, however, require proof of performance studies for LPFM directional antennas designed to protect other broadcast stations from interference thereby making sure that the antennas are properly functioning before allowing them to operate. The Commission noted that requiring such proofs before licensure would have a benefit to LPFM applicants because it would be unnecessary for them to become involved in interference disputes.

*G. Report to Congress*

15. The Commission will send a copy of this Report and Order, including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See id.* section 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. See *id.* section 604(b).

**Ordering Clauses**

16. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 303, 307, 308, 309, 316, and 319 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 307, 308, 309, 316, and 319, as well as the Local Community Radio Act of 2010, Public Law 111–371, 124 Stat. 4072 (2011), this Report and Order *is adopted* and *will become effective* 30 days after publication in the **Federal Register**.

17. *It is further ordered* that parts 11, 73, and 74 of the Commission's Rules *are amended* as set forth in the Final Rules and the rule changes to §§ 11.52, 73.807, 73.810, 73.825, 73.860, 73.871, 74.1201, 74.1263, 74.1283, and 74.1290 adopted herein will become effective 30 days after the date of publication in the **Federal Register**.

18. *It is further ordered* that the rule changes to §§ 73.816, 73.850, and 73.870, which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, *will become effective* on the date specified in a document published in the **Federal Register** announcing such approval.

19. *It is further ordered* that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 19–193 *shall be terminated*, and its docket *closed.*

20. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

21. *It is further ordered* that the Commission *shall send* a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

**List of Subjects**

*47 CFR Part 11*

Radio, Television.

*47 CFR Part 73*

Civil defense, Communications equipment, Education, Mexico, Radio, Reporting and recordkeeping requirements, Television.

*47 CFR Part 74*

Communications equipment, Education, Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 11, 73, and 74 as follows:

## PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 1. The authority citation for part 11 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

■ 2. Amend § 11.52 by revising paragraph (c) to read as follows:

**§ 11.52 EAS code and Attention Signal Monitoring requirements.**

* * * * *

(c) EAS Participants that are co-owned and co-located with a combined studio or control facility (such as an AM and FM licensed to the same entity and at the same location or a cable headend serving more than one system) may comply with the EAS monitoring requirements contained in this section for the combined station or system with one EAS Decoder. The requirements of § 11.33 must be met by the combined facilities. Co-located LPFM stations including those operating on a time-sharing basis but which, pursuant to ownership restrictions in § 73.855 of this chapter cannot be co-owned, may

also comply with the EAS monitoring requirements with one EAS Decoder pursuant to a written agreement between the licensees ensuring that each licensee has access to the decoder; that the stations will jointly meet the requirements of § 11.33; and that each licensee remains fully and individually responsible for compliance with all EAS rules and obligations applicable to LPFM EAS participants in this part, and any EAS violations involving the shared, co-located equipment. Each LPFM licensee entering into such an arrangement remains fully and directly liable for enforcement actions involving the shared equipment as well as all other obligations attendant to LPFM EAS Participants in this part, regardless of which party to the agreement took or failed to take the actions giving rise to the violation.

* * * * *

## PART 73—RADIO BROADCAST SERVICES

■ 3. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 4. Amend § 73.512 by adding a sentence at the end of paragraph (d) to read as follows:

### § 73.512 Special procedures applicable to Class D noncommercial educational stations.

* * * * *

(d) * * * With respect to Class D (secondary) applications on Channels 201 through 220 required to protect television stations operating on TV Channel 6, the non-interference requirements in the preceding sentences will apply unless the application is accompanied by a written agreement between the Class D (secondary) applicant and each affected TV Channel 6 broadcast station concurring with the proposed Class D facilities.

■ 5. Amend § 73.807 by adding paragraph (g)(5) to read as follows:

### § 73.807 Minimum distance separation between stations.

* * * * *

(g) * * *

(5)(i) LPFM stations located within 125 kilometers of the Mexican border are limited to 50 watts (0.05 kW) ERP, a 60 dBu service contour of 8.7 kilometers and a 34 dBu interfering contour of 32 kilometers in the direction of the Mexican border. LPFM stations may operate up to 100 watts in all other directions.

(ii) LPFM stations located between 125 kilometers and 320 kilometers from the Mexican border may operate in excess of 50 watts, up to a maximum ERP of 100 watts. However, in no event shall the location of the 60 dBu contour lie within 116.3 kilometers of the Mexican border.

(iii) Applications for LPFM stations within 320 kilometers of the Canadian border may employ an ERP of up to a maximum of 100 watts. The distance to the 34 dBu interfering contour may not exceed 60 kilometers in any direction.

■ 6. Amend § 73.810 by revising paragraph (a)(1)(iii) to read as follows:

### § 73.810 Interference.

(a) * * *

(iii) The direct reception by the public of the off-the-air signals of any full-service station or previously authorized secondary station. Interference will be considered to occur whenever reception of a regularly used signal on a third-adjacent channel is impaired by the signals radiated by the LPFM station, regardless of the quality of such reception, the strength of the signal so used, or the channel on which the protected signal is transmitted.

* * * * *

■ 7. Amend § 73.816 by revising paragraph (b), removing and reserving paragraph (c), and revising paragraph (d) to read as follows:

### § 73.816 Antennas.

* * * * *

(b) Permittees and licensees may employ directional antennas in the LPFM service, in accordance with paragraph (d) of this section.

(c) [Reserved]

(d)(1) Composite antennas and antenna arrays may be used where the total ERP does not exceed the maximum determined in accordance with § 73.811(a).

(2) Either horizontal, vertical, circular, or elliptical polarization may be used provided that the supplemental vertically polarized ERP required for circular or elliptical polarization does not exceed the ERP otherwise authorized. Either clockwise or counterclockwise rotation may be used. Separate transmitting antennas are permitted if both horizontal and vertical polarization is to be provided.

(3) An application that specifies the use of a directional antenna must provide the information identified in § 73.316(c) except that such information shall not be required of:

(i) Public safety and transportation permittees and licensees eligible pursuant to § 73.853(a)(2) using directional antennas in connection with operation of Travelers' Information Service stations;

(ii) LPFM permittees and licensees proposing a waiver of the second-adjacent channel spacing requirements of § 73.807 for the sole purpose of justifying such a waiver; and

(iii) LPFM permittees and licensees using directional antennas solely for the purpose of meeting the international border zone distance requirements of § 73.807(g).

■ 8. Amend § 73.825 by adding introductory text to read as follows:

### § 73.825 Protection to reception of TV channel 6.

The following spacing requirements will apply to LPFM applications on Channels 201 through 220 unless the application is accompanied by a written agreement between the LPFM applicant and each affected TV Channel 6 broadcast station concurring with the proposed LPFM facilities.

* * * * *

■ 9. Amend § 73.850 by adding paragraph (d) to read as follows:

### § 73.850 Operating schedule.

* * * * *

(d) In the event that causes beyond the control of a permittee or licensee make it impossible to adhere to the operating schedule in paragraph (b) of this section or to continue operating, the station may limit or discontinue operation for a period not exceeding 30 days without further authority from the Commission provided that notification is sent to the Commission in Washington, DC, Attention: Audio Division, Media Bureau, no later than the 10th day of limited or discontinued operation. During such period, the permittee shall continue to adhere to the requirements of the station license pertaining to lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the permittee or licensee will notify the FCC, Attention: Audio Division, of the date that normal operations resumed. If causes beyond the control of the permittee or licensee make it impossible to comply within the allowed period, Special Temporary Authority (see § 73.1635) must be requested to remain silent for such additional time as deemed necessary not to exceed, in total, 12 consecutive months (see § 73.873(b)).

■ 10. Amend § 73.860 by revising paragraph (b) to read as follows:

### § 73.860 Cross-ownership.

* * * * *

(b) A party that is not a Tribal Applicant, as defined in § 73.853(c), may hold attributable interests in one

LPFM station and no more than two FM translator stations, two FM booster stations, or one FM translator station and one FM booster station provided that the following requirements are met:

(1) The 60 dBu contour of the LPFM station overlaps the 60 dBu contour of the commonly-owned FM translator station(s) and entirely encompasses the 60 dBu service contour of the FM booster station(s);

(2) The FM translator and/or booster station(s), at all times, synchronously rebroadcasts the primary analog signal of the commonly-owned LPFM station or, if the commonly-owned LPFM station operates in hybrid mode, synchronously rebroadcasts the digital HD–1 version of the LPFM station's signal;

(3) The FM translator station receives the signal of the commonly-owned LPFM station over-the-air and directly from the commonly-owned LPFM station itself. The FM booster station receives the signal of the commonly-owned LPFM station by any means authorized in § 74.1231(i) of this chapter; and

(4) The transmitting antenna of the FM translator and/or booster station(s) is located within 16.1 kilometers (10 miles) for LPFM stations located in the top 50 urban markets and 32.1 kilometers (20 miles) for LPFM stations outside the top 50 urban markets of either the transmitter site of the commonly-owned LPFM station or the reference coordinates for that station's community of license.

* * * * *

■ 11. Amend § 73.870 by revising paragraph (a) to read as follows:

**§ 73.870 Processing of LPFM broadcast station applications.**

(a) A minor change for an LPFM station authorized under this subpart is limited to transmitter site relocations not exceeding 11.2 kilometers or where the 60 dBu contour of the authorized facility overlaps the 60 dBu contour of the proposed facility. These distance limitations do not apply to amendments or applications proposing transmitter site relocation to a common location filed by applicants that are parties to a voluntary time-sharing agreement with regard to their stations pursuant to § 73.872(c) and (e). These distance limitations also do not apply to an amendment or application proposing transmitter site relocation to a common location or a location very close to another station operating on a third-adjacent channel in order to remediate interference to the other station; provided, however, that the proposed relocation is consistent with all localism certifications made by the applicant in its original application for the LPFM station. Minor changes of LPFM stations may include:

(1) Changes in frequency to adjacent or IF frequencies (+/− 1, 2, 3, 53 or 54 channels) or, upon a technical showing of reduced interference, to any frequency; and

(2) Amendments to time-sharing agreements, including universal agreements that supersede involuntary arrangements.

* * * * *

■ 12. Amend § 73.871 by revising paragraphs (c)(1) and (2) to read as follows:

**§ 73.871 Amendment of LPFM broadcast station applications.**

* * * * *

(c) * * *

(1) Site relocations of 11.2 kilometers or less;

(2) Site relocations that involve overlap between the 60 dBu service contours of the currently authorized and proposed facilities;

* * * * *

## PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 13. The authority citation for part 74 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336 and 554.

■ 14. Amend § 74.1201 by revising paragraph (f) and adding paragraph (l) to read as follows:

**§ 74.1201 Definitions.**

* * * * *

(f) *FM broadcast booster station.* A station in the broadcasting service operated for the sole purpose of retransmitting the signals of an FM radio broadcast station, by amplifying and reradiating such signals, without significantly altering any characteristic of the incoming signal other than its amplitude. Unless specified otherwise, this term includes LPFM boosters as defined in paragraph (l) of this section.

* * * * *

(l) *LPFM booster.* An FM broadcast booster station as defined in paragraph (f) of this section that is commonly-owned by an LPFM station for the purpose of retransmitting the signals of the commonly-owned LPFM station.

■ 15. Amend § 74.1263 by revising paragraph (b) to read as follows:

**§ 74.1263 Time of operation.**

* * * * *

(b) A booster station rebroadcasting the signal of an AM, FM, or LPFM primary station shall not be permitted to radiate during extended periods when signals of the primary station are not being retransmitted. Notwithstanding the foregoing, FM translators rebroadcasting Class D AM stations may continue to operate during nighttime hours only if the AM station has operated within the last 24 hours.

* * * * *

■ 16. Amend § 74.1283 by revising paragraph (b) to read as follows:

**§ 74.1283 Station identification.**

* * * * *

(b) The call sign of an FM booster station or LPFM booster will consist of the call sign of the primary station followed by the letters ''FM'' or ''LP'' and the number of the booster station being authorized, *e.g.,* WFCCFM–1 or WFCCLP–1.

* * * * *

**§ 74.1290 [Removed and Reserved]**

■ 17. Remove and reserve § 74.1290.

[FR Doc. 2020–10394 Filed 6–10–20; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R1–ES–2017–0035; FF09E22000 FXES11130900000 201]**

**RIN 1018–BA43**

## Endangered and Threatened Wildlife and Plants; Removing the Borax Lake Chub From the List of Endangered and Threatened Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; availability of post-delisting monitoring plan.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service or USFWS), are removing the Borax Lake chub (currently listed as *Gila boraxobius*), a fish native to Oregon, from the Federal List of Endangered and Threatened Wildlife on the basis of recovery. This final rule is based on a review of the best available scientific and commercial information, which indicates that the threats to the Borax Lake chub have been eliminated or reduced to the point where the species no longer meets the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act).

**DATES:** This rule is effective July 13, 2020.

**ADDRESSES:** This final rule, the post-delisting monitoring plan, and supporting documents are available on the internet at *http://www.regulations.gov* in Docket No. FWS–R1–ES–2017–0035, or at *https://ecos.fws.gov*. In addition, the supporting file for this final rule will be available for public inspection by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone: 503–231–6179.

**FOR FURTHER INFORMATION CONTACT:** Paul Henson, State Supervisor, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone: 503–231–6179. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Executive Summary

*Why we need to publish a rule.* Under the Act, a species warrants protection through listing if it is endangered or threatened. Conversely, a species may be removed from the Federal List of Endangered and Threatened Wildlife (List) if the Act's protections are determined to be no longer required based on extinction, recovery, or the listed entity not meeting the statutory definition of a species. Removing a species from the List can be completed only by issuing a rule. This rule removes the Borax Lake chub (*Gila boraxobius*) from the List due to recovery.

*The basis for our action.* We have determined that the Borax Lake chub is no longer at risk of extinction now nor likely to become so in the foreseeable future, and the following criteria for delisting described in the species recovery plan have been met or exceeded:

- The presence of a naturally reproducing population of Borax Lake chub in Borax Lake that is free of exotic species;
- Permanent protection of the 160-acre (65-hectare) parcel of land surrounding and including Borax Lake;
- Removal of threats to subsurface waters from geothermal energy exploration or development;
- Reestablishment of ponds and natural marshes adjacent to Borax Lake in order to create more chub habitat;
- A viable, self-sustaining population of Borax Lake chub;
- Permanent protection of a second 160-acre (65-hectare) parcel of land to the north of Borax Lake;
- Withdrawal of Borax Lake waters from appropriation (*i.e.,* diversion and use under water right);
- Establishment of a fence around the 640-acre (259-hectare) critical habitat area to prevent vehicle entry;
- Establishment of monitoring programs to survey habitat and fish population status; and
- Lack of any new threats to the species or ecosystem for 5 consecutive years.

We consider the Borax Lake chub to be a conservation-reliant species, which we consider to be a species that has generally met recovery criteria but requires continued active management to sustain the species and associated habitat in a recovered condition (see Scott *et al.* 2005, entire). To address this management need, the Bureau of Land Management (BLM), the Oregon Department of Fish and Wildlife (ODFW), and the Service developed, and are implementing, the Borax Lake chub cooperative management plan (CMP) (USFWS *et al.* 2018), and are committed to the continuing long-term management of this species.

*Peer review and public comment.* We evaluated the species' needs, current conditions, and future conditions to support our February 26, 2019, proposed rule. We sought comments from independent specialists to ensure that our determination is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on the draft post-delisting monitoring plan. We considered all comments and information we received during the public comment period on the February 26, 2019, proposed rule to delist the Borax Lake chub and the draft post-delisting monitoring plan when developing this final rule.

## Background

### *Previous Federal Actions*

On May 28, 1980, we published a rule in the **Federal Register** to emergency-list the Borax Lake chub (as *Gila* sp.) as endangered and to designate critical habitat for the species (45 FR 35821). The emergency rule provided protection to this species for 240 days, until January 23, 1981.

On October 16, 1980, we proposed to list the Borax Lake chub (as *Gila boraxobius*) as an endangered species and to designate critical habitat (45 FR 68886). The distribution of the Borax Lake chub is limited to Borax Lake, its outflow, and Lower Borax Lake in Harney County, Oregon. The proposed listing action was taken because proposed geothermal development in and around Borax Lake, and human modification of the lake, threatened the integrity of the species' habitat and, hence, its survival.

On October 5, 1982, we published a final rule in the **Federal Register** (47 FR 43957) listing the Borax Lake chub (as *Gila boraxobius*) as endangered and designating areas totaling 640 acres (ac) (259 hectares (ha)) in and around Borax Lake as critical habitat for the Borax Lake chub. A recovery plan for the species was completed on February 4, 1987 (USFWS 1987).

Our most recent 5-year review of the status of Borax Lake chub, completed on August 23, 2012 (USFWS 2012), concluded that the Borax Lake chub's status had substantially improved since listing, and that the Borax Lake chub no longer met the definition of an endangered species, but may meet the definition of a threatened species throughout all of its range, under the Act (16 U.S.C. 1531 *et seq.*); the review recommended the Borax Lake chub be reclassified from endangered to threatened (*i.e.,* ''downlisted''). However, this final rule, which is based on information contained in the 2012 status review as well as additional information that subsequently became available, removes the Borax Lake chub from the List (*i.e.,* ''delists'' the species) due to recovery.

On February 26, 2019, we published a proposed rule in the **Federal Register** (84 FR 6110) to delist the Borax Lake chub on the basis of recovery. In that document, we requested information and comments from the public and peer reviewers regarding the proposed rule and the draft post-delisting monitoring plan for the Borax Lake chub.

### *Species Information*

At the time of listing, the genus *Gila* was considered to include three subgenera: *Gila, Siphateles* (including the Borax Lake chub), and *Snyderichthys* (Uyeno 1961, pp. 84–85; Bailey and Uyeno 1964, pp. 238–239). Since our final listing determination (47 FR 43957; October 5, 1982), analysis of lepidological (scale morphology and arrangement) and osteological (structure and function of bones) characters (Coburn and Cavender 1992, pp. 344–347) and mitochondrial ribosomal RNA sequences (Simons and Mayden 1997, p. 194; 1998, p. 315; Simons *et al.* 2003, pp. 71–76) have indicated that the genus *Gila* in the broad sense was not descended from a common ancestor not shared with other groups. Therefore, the three subgenera were elevated to genera.

The American Fisheries Society (Page *et al.* 2013, p. 78) has also followed this approach and classified the Borax Lake chub within the genus *Siphateles.* Consequently, the current scientific name of the Borax Lake chub is *Siphateles boraxobius.* This taxonomic revision changed the name of the listed entity from *Gila boraxobius* to *Siphateles boraxobius,* but did not alter the description, distribution, range, or listing status of the species from what it was at the time of listing. Based on this revision, we consider *Siphateles boraxobius* to be the most appropriate scientific name for this taxon. Because we are removing the species from the List, we are not amending the species' scientific name on the List, but relevant documents, such as the post-delisting monitoring plan for the species, will reflect this usage.

A recent genetic assessment by Smith *et al.* (2019, pp. 497–499) affirms genetic divergence between Alvord chub (*Siphateles alvordensis*) and Borax Lake chub approximately 6,000 to 9,000 years ago, presumably as Lake Alvord dried at the end of the last period of glaciation, isolating Borax Lake. The analysis further supports the status of these two as distinct species consistent with past studies of morphological data (Williams and Bond 1980, entire).

The Borax Lake chub is a small minnow (Family: Cyprinidae) endemic to Borax Lake and its outflows. Borax Lake is a 10.2-ac (4.1-ha) geothermally heated, alkaline spring-fed lake in southeastern Oregon. The lake is perched 30 feet (ft) (10 meters (m)) above the desert floor on large sodium-borate deposits (Williams and Bond 1980, p. 297). Water depth averages approximately 3.3 ft (1.0 m), with a maximum measured depth of 88.6 ft (27 m) at the thermal vent (Scheerer and Jacobs 2005, p. 6). The lake bottom includes patches of bedrock and fine gravel, with a sparse growth of aquatic plants, and is covered with thick, fluffy silt. Average lake temperatures range from a high of 39.2 degrees Celsius (°C) (102.6 degrees Fahrenheit (°F)) to a low of 22 °C (71.6 °F) near the shoreline (Scheerer *et al.* 2013, pp. 3–6). Borax Lake chub prefer the shallow habitats along the margins of the lake (Perkins *et al.* 1996, p. 8).

The Borax Lake chub is an opportunistic omnivore. The diets of juveniles and adults are very similar and include aquatic and terrestrial insects, algae, mollusks and mollusk eggs, aquatic worms, fish scales, spiders, and seeds (Williams and Williams 1980, p. 113). Males and females can reach reproductive maturity within one year. Spawning occurs primarily in the spring months but can occur year-around (Williams and Bond 1983, pp. 412–413). The reproductive behavior and length of incubation is unknown.

Population abundance estimates for the Borax Lake chub were conducted annually from 1986 to 1997, from 2005 to 2012, and from 2015 to 2017. Over this period, the population abundance has shown a high degree of variability, ranging from a low of 1,242 in 2015, to a record high of 76,931 in 2017 (Scheerer *et al.* 2015, p. 3; Meeuwig 2017, pers. comm.). A pattern of population reduction followed by a 1- to 5-year period of rebuilding has been observed multiple times during the period of record. The mechanisms contributing to variability in abundance are not entirely clear, but Scheerer *et al.* (2012, p. 16) surmised that because Borax Lake chub experience water temperatures that are at or near their thermal critical maximum (Williams and Bond 1983, p. 412), survival and recruitment are likely higher during years when water temperatures are cooler in the lake. Water temperatures in Borax Lake are driven by a deep geothermal aquifer with water temperatures up to 40 °C (140 °F) (Perkins *et al.* 1996, p. 2). Water temperature is also influenced by a variety of other factors, including air temperature, inflow from smaller geothermal and cool water springs, ephemeral thermoclines between areas of relatively cooler and warmer water, and wind.

**Recovery and Recovery Plan Implementation**

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of threatened and endangered species unless we determine that such a plan will not promote the conservation of the species. Recovery plans are not regulatory documents and are instead intended to establish goals for long-term conservation of a listed species; define criteria that are designed to indicate when the threats facing a species have been removed or reduced to such an extent that the species may no longer need the protections of the Act; and provide guidance to our Federal, State, and other governmental and nongovernmental partners on methods to minimize threats to listed species. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all recovery criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished or become obsolete, yet the Service may judge that, overall, the threats have been minimized sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened or perhaps to delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan.

Likewise, information on the species may subsequently become available that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

The following discussion provides a brief review of recovery planning and implementation for the Borax Lake chub, as well as an analysis of the recovery criteria and goals as they relate to evaluating the status of the taxon.

The Borax Lake Chub Recovery Plan (USFWS 1987, pp. 27–30) described an ''interim objective'' for potential reclassification to threatened status, as well as a ''primary objective'' for recovery that could result in removal of the species from the List (*i.e.,* delisting). It established the following four conditions as criteria for reclassification from endangered to threatened status (*i.e.,* downlisting):

(1) The presence of a naturally reproducing population of the Borax Lake chub in Borax Lake that is free of exotic species;

(2) Permanent protection of the 160-ac (65-ha) parcel of land surrounding and including Borax Lake (T37S, R33E, sec. 14) by The Nature Conservancy (TNC) or other appropriate public resource agency;

(3) Removal of threats to subsurface waters from geothermal energy exploration or development; and

(4) Reestablishment of ponds and natural marshes adjacent to Borax Lake in order to create more chub habitat, and reestablishment of Lower Borax Lake by waters from Borax Lake in order to create more habitat.

The recovery plan stated that conditions to meet the primary objective of recovery (*i.e.,* delisting) include the above four downlisting conditions as well as the following six additional conditions:

(1) A viable, self-sustaining population of Borax Lake chub, which is defined as a naturally sustaining population that is free of exotic species

and fluctuates in size within the seasonal ranges observed in 1986–1987;

(2) Permanent protection of a second 160-ac (65-ha) parcel of land to the north of Borax Lake (T37S, R33E, sec. 11) by TNC or another appropriate public resource agency;

(3) Withdrawal of Borax Lake waters from appropriations (*i.e.,* diversion and use under water right);

(4) Establishment of a fence around the 640-ac (259-ha) critical habitat area to prevent vehicle entry;

(5) Establishment of monitoring programs to survey habitat and fish population status; and

(6) Lack of any new threats to the species or ecosystem for 5 consecutive years.

Recovery Plan Implementation

Significant conservation objectives that address the primary threats to the Borax Lake chub have been accomplished through implementing the 1987 recovery plan, including protection of the Borax Lake ecosystem from disturbances through acquisition of key private lands, protection of subsurface and surface waters, closure of fragile lands to vehicle access, removal of livestock grazing, monitoring, and other recovery actions. The following discussion summarizes information on recovery actions that have been implemented under each downlisting and delisting criterion.

*Conservation Management Plan*

In recognition of the fact that we consider the Borax Lake chub to be a conservation-reliant species, the BLM, the ODFW, and the Service developed, and are implementing, the Borax Lake chub CMP (USFWS *et al.* 2018), and are committed to the continuing long-term management of this species. While the CMP provides agency commitments for long-term stewardship of Borax Lake and Borax Lake chub, the CMP is a voluntary agreement and delisting is not dependent upon implementation of the actions described in the CMP. However, we anticipate the plan will be implemented into the foreseeable future for the following reasons. First, each of the cooperating agencies has established a long record of engagement in conservation actions for the Borax Lake chub, including the BLM's prior contributions through land acquisition and 3 decades of habitat management around Borax Lake; scientific research and monitoring by the ODFW dating back to 1986; and funding support, coordination of recovery actions, and legal obligations by the Service to monitor the species into the future under the Borax Lake chub post-delisting monitoring plan. In addition, all three cooperating agencies are active participants in the Oregon Desert Fishes Working Group, an interagency group facilitated by the Service that meets annually to discuss recent monitoring and survey information for multiple fish species, including Borax Lake chub, as well as to coordinate future monitoring and management activities.

Second, implementation of the CMP is already underway. For example, under the guidance of the CMP, the BLM has conducted quarterly site visits to determine the general health of the Borax Lake ecosystem. The BLM and TNC have maintained the fence and gate around Borax Lake to prevent unauthorized vehicle access. ODFW has maintained water temperature and water elevation monitoring equipment, monitored the State of Oregon's Department of Geology and Mineral Industries (DOGAMI) drilling permits, and conducted regular abundance estimates to assess the status of the population. The Service has continued to provide funding, when available, to support monitoring efforts.

Third, the conservation mission and authorities of these agencies authorize this work even if the species is delisted. For example, the Burns District BLM's resource management plan (RMP) and BLM Manual 6840.06E both provide general management direction for special status species, including the Borax Lake chub. ''Special status'' species for the BLM include sensitive, proposed for listing, threatened, and endangered species. When delisted, the Borax Lake chub will still be considered a ''special status'' species, as it meets the criteria to be ''sensitive'' for the BLM. According to the BLM's *Criteria for determining FS R6 and OR/WA BLM Sensitive and Strategic Species* (July 13, 2015), all federally delisted species that are suspected or documented on BLM or U.S. Forest Service lands are considered ''sensitive'' for the duration of their post-delisting monitoring plan unless the species meets some of the other criteria for being ''sensitive.'' In this case, being a State/Oregon Biodiversity Information Center (ORBIC) rank 1 species, with a Heritage program/NatureServe rank of S1 puts the Borax Lake chub firmly in the ''sensitive'' category (Huff 2019, pers. comm.; ORBIC 2016, p. 5). Special status species lists and criteria are updated and transmitted to the BLM Districts approximately every 3 years through the State Director, who then directs the Districts to use the new list (Huff 2019, pers. comm.). The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) directs the BLM to manage public land to provide habitat for fish and aquatic wildlife and to protect the quality of water resources. The ODFW's State of Oregon Wildlife Diversity Plan (Oregon Administrative Rule (OAR) 635–100–0080), Oregon Native Fish Conservation Policy (OAR 636–007–0502), and the Oregon Conservation Strategy (ODFW 2016) each provide protective measures for the conservation of native fish including the Borax Lake chub, which will remain to the best of our knowledge on the ODFW's sensitive species list even when the species is removed from the Federal List. The Service is authorized to assist in the protection of fish and wildlife and their habitats under authorities provided by the Act (16 U.S.C. 1531 *et seq.*), the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), and the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j, not including 742d–l).

Fourth, there is a practical reason to anticipate implementation of the CMP into the foreseeable future: The CMP actions are technically not complicated to implement, and costs are relatively low. We also have confidence the actions called for in the CMP will be effective in the future because they have already proven effective as evidenced by the information collected from recent actions and associated monitoring such as the annual downloading of air and water temperature loggers at Borax Lake and conducting site evaluations consistent with the guidelines in the CMP.

Lastly, the Service, ODFW, and BLM collaboratively developed the Borax Lake chub CMP to outline individual agency roles and responsibilities, and commitments into the future, regarding Borax Lake chub, the Borax Lake ecosystem, and surrounding lands (USFWS *et al.* 2018). If an evaluation by the Service suggests the habitat and population are at risk, the Service will evaluate the need to again add the species to the List (*i.e.,* ''relist'' the species) under the Act. Taken together, it is therefore reasonable to conclude that the CMP will be implemented as anticipated, and that the long-term recovery of the Borax Lake chub will be maintained and monitored adequately.

*Downlisting Criteria*

*Downlisting Criterion 1:* The presence of a naturally reproducing population of Borax Lake chub in Borax Lake that is free of exotic species.

This criterion has been met. To be considered naturally reproducing, Borax Lake chub need to reproduce in their natural habitat in Borax Lake with no human intervention, such as supplementation with hatchery- or

aquarium-raised fish. The Borax Lake chub population has never been supplemented with hatchery- or aquarium-raised fish and continues to reproduce naturally on an annual basis. In the 3 decades Borax Lake chub have been monitored, there has been only one documented occurrence of an exotic fish species. In 2013, an ODFW biologist observed a nonnative fish that was believed to be a bass given observed morphology (Scheerer *et al.* 2013, pp. 2–3, 9–10). Subsequent efforts to capture or observe this fish or other nonnative fishes were unsuccessful, and none has been seen in subsequent monitoring. The survival in Borax Lake of this nonnative fish, or of any other commonly introduced nonnative fishes, is unlikely given the geothermally heated high water temperatures.

We consider this criterion met based on the lack of need for conservation actions supporting the species' reproductive success and the fact that only a single occurrence of a nonnative species has been documented. As noted above, we determined the likelihood of survival of this nonnative fish was low, and no observations or detections of this or other nonnative fishes have been made during subsequent surveys. See ''Delisting Criterion 1'' and *C. Disease or Predation* for additional discussion regarding the potential for exotic species introduction into Borax Lake.

*Downlisting Criterion 2:* Permanent protection for the 160-acre parcel of land surrounding and including Borax Lake (T37S, R33E, sec. 14) by TNC or other appropriate public resource agency.

This criterion has been met. In 1983, TNC leased two 160-ac (65-ha) private land parcels, one surrounding Borax Lake and the other immediately to the north. In 1993, TNC acquired both parcels. TNC also acquired subsurface mineral rights to the land surrounding Borax Lake. TNC designated the land surrounding Borax Lake, and the 160-ac (65-ha) parcel to the north, as a preserve for the purpose of conserving the Borax Lake ecosystem. With the purchase of the two parcels by TNC, all lands designated as critical habitat for the Borax Lake chub are in public or conservation ownership. The diversion of water for irrigation and livestock grazing within designated critical habitat ceased. TNC no longer permits vehicular access to the preserve except for access for people with disabilities or for scientific research.

In addition to the above, in 1983, the BLM designated 520 ac (210 ha) of public land surrounding Borax Lake as an ''area of critical environmental concern'' (ACEC) to protect Borax Lake chub and its habitat. In 2005, the record of decision for the resource management plan for the Andrews Resource Area added 80 ac (32 ha), for a total 600-ac (243-ha) Borax Lake ACEC (BLM 2005, p. 70). Following this designation, the area was fenced to exclude livestock from entering the ACEC and discourage grazing in the area, as closing critical habitat to livestock grazing was called for in the recovery plan in order to decrease disturbance to soils, marsh vegetation and outflow channels (USFWS 1987, pp. 4, 31, 39). The lake is now completely enclosed by fencing, including most of the 640 ac (259 ha) of designated critical habitat, except for a small portion that serves as a parking area for pedestrian access to the lake.

*Downlisting Criterion 3:* Removal of threats to subsurface waters from geothermal energy exploration or development.

This criterion has been met. While this criterion does not identify a geographic area for which threats of geothermal energy exploration or development should be removed, the recovery plan's step-down outline and narrative describing recovery actions clearly identify this criterion as pertaining to Borax Lake and two 160-ac (65-ha) parcels of private land surrounding Borax Lake (USFWS 1987, pp. 30–45). These lands were eventually purchased by TNC and designated as critical habitat for Borax Lake chub, thereby removing the threat of geothermal development within close proximity to Borax Lake. Although the recovery plan did not explicitly call for removal of potential geothermal development threats outside of designated critical habitat, the Service has acknowledged that geothermal development outside critical habitat, but in proximity to Borax Lake, may constitute a potential threat (USFWS 2012, p. 24).

Numerous geologic studies have been conducted in the vicinity of Borax Lake, yet there is limited detailed information regarding the extent of the geothermal aquifer and the configuration of geothermal fluid flow pathways surrounding Borax Lake (Schneider and McFarland 1995, entire; Fairley *et al.* 2003, entire; Fairley and Hinds 2004, pp. 827–828; Cummings 1995, pp. 12–19). As such, the best available scientific information does not allow us to determine the precise geographic distance over which geothermal development may represent a threat to the Borax Lake chub and the Borax Lake ecosystem. Given the lack of scientific information (*i.e.,* depth, extent, source of water, etc.) on the Borax Lake aquifer, a reasonable position is that geothermal development outside of critical habitat may represent a potential threat to Borax Lake chub and that the closer the development is to critical habitat, the greater the likelihood that development could affect the Borax Lake chub and the Borax Lake ecosystem.

With the passage of the Steens Mountain Cooperative Management and Protection Act of 2000 (Steens Act; 16 U.S.C. 460nnn *et seq.*) and the completion of the Steens Andrews Resource Management Plan (BLM 2005), the BLM has withdrawn the Alvord Known Geothermal Resource Area from mineral and geothermal exploration and development (BLM 2005a, p. 49). The Steens Act congressionally designated a ''mineral withdrawal area'' encompassing approximately 900,000 ac (364,217 ha) on BLM-administered lands. The mineral withdrawal area contains the majority of the Alvord Known Geothermal Resource Area (Alvord KGRA), including Borax Lake and surrounding public lands, with the exception of 332 ac (134 ha) of BLM-administered land located approximately 4.5 mi (7.2 km) from Borax Lake (BLM 2005a, p. I–2; BLM 2005b, p. 4).

Private lands within the vicinity of Borax Lake are not affected by the mineral withdrawal. Approximately 2,000 ac (809 ha) of privately owned lands occur within a radius of approximately 1 to 3 miles (mi) (1.6 to 4.8 kilometers (km)) from Borax Lake. Based on geothermal development investigated by various entities over the last 3 decades, it is reasonable to assume that future geothermal development may be explored on private land in the vicinity of Borax Lake. However, as of 2018, there are no active proposals in place for such development.

The most recent exploration for geothermal resource development occurred in 2008, when the BLM received an inquiry from Pueblo Valley Geothermal LLC regarding permitting processes for geothermal exploratory drilling and the potential for developing a geothermal electrical generation plant in the Alvord Lake basin potentially within 3 to 5 mi (4.8 to 8.0 km) of Borax Lake. Pueblo Valley Geothermal LLC submitted a proposal to the BLM on January 31, 2012, for a binary geothermal plant that would produce 20 to 25 megawatts. Pueblo Valley Geothermal LLC also sought to acquire approximately 3,360 ac (1,360 ha) of BLM land via land exchange in order to develop their project. The BLM responded with a letter (Karges. 2012, pers. comm.) explaining that the BLM-managed lands surrounding the private lands under lease are part of the

Leasable and Saleable mineral withdrawal enacted by the Steens Act and implemented under the Steens Mountain Cooperative Management and Protection Area Resource Management Plan. The BLM informed Pueblo Valley Geothermal LLC that they would not be able to complete an exchange for various reasons, including: (1) Difficulties in proposing and mitigating a project that would alter land designated as Visual Resource Management Class 2 (the visual resource management objective for class 2 is to retain the existing character of the landscape, and the level of change to the characteristic landscape should be low); (2) the lack of time and staffing to complete a feasibility analysis; and (3) the BLM's requirement that the exchange demonstrate a clear public benefit. The BLM suggested the best route would be to find a geothermal resource outside of the mineral withdrawal area and pursue exploration and development there. Pueblo Valley Geothermal LLC subsequently has become inactive and filed to dissolve their LLC status in the State of Oregon on December 26, 2013.

As stated previously, although the passage of the Steens Act designated a mineral withdrawal area on public lands surrounding Borax Lake, it does not include 322 ac (134 ha) of BLM-administered lands and 2,000 ac (809 ha) of private land located within a radius of approximately 1 to 4.5 mi (1.6 to 7.24 km) from Borax Lake. Therefore, while we view this criterion as having been met, we acknowledge there remains a potential for geothermal development on lands not formally withdrawn from geothermal or mineral development in the Alvord Basin and that future development of these resources constitutes a potential threat to Borax Lake chub. That said, we have determined the likelihood of this threat becoming operative in the foreseeable future is low.

See ''Delisting Criterion 3'' and *D. The Inadequacy of Existing Regulatory Mechanisms* for additional discussion regarding the threat of geothermal resource development.

*Downlisting Criterion 4:* Reestablishment of ponds and natural marshes adjacent to Borax Lake in order to create more chub habitat, and reestablishment of Lower Borax Lake by waters from Borax Lake in order to create more habitat.

The intent of this criterion was to restore natural processes and maximize habitat for Borax Lake chub, and that has been accomplished. Although the reestablishment of Lower Borax Lake has not occurred, the Service determined subsequent to the development of the recovery plan that the reestablishment of the lake was not necessary for the recovery of the species. The 5-year review in 2012 (USFWS 2012, pp. 7, 26) concluded that Lower Borax Lake does not provide suitable habitat for Borax Lake chub due to desiccation during summers with low precipitation and to unsuitable habitat in the winter due to freezing. As a result, we no longer consider reestablishment of Lower Borax Lake to be a necessary action for Borax Lake chub recovery.

Numerous actions to maintain lake levels and restore natural outflows (and thereby reestablish ponds and natural marshes) have occurred at Borax Lake since the Borax Lake chub was listed. Beginning in 1983, TNC, with assistance from the BLM and the ODFW, repaired holes in the northern and eastern shorelines of the lake, and deepened the outflow channel on the southwestern shoreline to promote flow to Lower Borax Lake (USFWS 1987, p. 23). In 1984, the Service and TNC manually constructed several channels diverting water from the southwestern outflow channel into the adjacent marsh (USFWS 1987, p. 25). By 2003, there was no open-water connection between Borax Lake and Lower Borax Lake, but Lower Borax Lake did contain water at that time (Williams and Macdonald 2003, p. 7).

The only habitat outside of Borax Lake that provides habitat for Borax Lake chub is the wetland (referred to as ''the marsh'' in the 1982 listing rule (47 FR 43957; October 5, 1982)) to the south of Borax Lake, the overflow channel that connects the wetland to Borax Lake, and a second overflow channel on the northern end of the lake. Although the wetland at times maintains water year-round, water levels are variable and are influenced by a groundwater vent in the wetland and overflow from Borax Lake. The seasonal pattern and overall contribution of groundwater inputs to the wetland are not understood. In September 2015, the wetland was dry, due in part from reduced flow from Borax Lake caused by a vegetation plug in the overflow channel and presumably no or reduced contribution from groundwater. Later that fall, the wetland was observed to be full, presumably due to increased groundwater inputs. In response to the reduced flow in the overflow channel, the ODFW manually removed vegetation in spring 2016, to provide a more consistent flow through the overflow channel (Scheerer 2016, pers. comm.). Therefore, while groundwater inputs to the wetland are unpredictable, the increased flow through the overflow channel due to manual vegetation removal by the ODFW is anticipated to increase the likelihood of maintaining habitat in the wetland for the Borax Lake chub. While the wetland and several overflow channels do not represent a large amount of habitat for the Borax Lake chub, they are potentially important cool-water refuge habitats during periods of above-average air temperatures when suitable cool-water habitat in Borax Lake may be reduced. An associated discussion can be found under ''Delisting Criterion 1'' and *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* in this final rule.

*Delisting Criteria*

In addition to the four downlisting criteria, the recovery plan also identified six additional criteria for delisting.

*Delisting Criterion 1:* A viable, self-sustaining population of Borax Lake chub, which is defined as a naturally sustaining population that is free of exotic species and fluctuates in size within the seasonal ranges observed in 1986 to 1987.

This criterion has been met. Data collected from 1986 through 2019 show a self-sustaining population persists at Borax Lake. The population is naturally sustaining without the need for supplementation, such as propagation in a hatchery or in aquaria.

The Borax Lake chub is a species that demonstrates high annual variability in population abundance, ranging from a low of 1,242 estimated fish in 2015, to a high of 76,931 in 2017 (see table, below). As recently as 2010 and 2011, the population estimates were 25,489 and 26,571, respectively. The latest population estimate was 44,933 in 2019. Prior to 2015, the lowest population estimate was 4,132 in 1988. Such population variability, with opportunistic demographic resilience, is relatively common for small desert fishes (Winemiller 2005, pp. 878–879). In the case of the Borax Lake chub, population variation likely results from a combination of factors including short life span, seasonal and annual variability in habitat conditions, and occurrence in water temperatures at the edge of the species' thermal tolerance. Given our improved knowledge of natural variability as described above, we have concluded that the portion of this delisting criterion that called for population levels to fluctuate within the narrow range of population estimates conducted in 1986 and 1987 is unrealistic, and is no longer reasonable

to maintain as a recovery goal for this species.

TABLE OF POPULATION MARK-RECAPTURE ESTIMATES FOR BORAX LAKE CHUB FROM 1986 TO 2019, INCLUDING ADJUSTED LINCOLN-PETERSON AND HUGGINS CLOSED CAPTURE MODELS[1]

| Year[2] | Estimate | Lower 95% confidence limit | Upper 95% confidence limit |
|---|---|---|---|
| 1986 | 15,276 | 13,672 | 17,068 |
| 1987 | 8,578 | 7,994 | 9,204 |
| 1988 | 4,132 | 3,720 | 4,589 |
| 1989 | 14,052 | 13,016 | 15,172 |
| 1990 | 19,165 | 18,117 | 20,273 |
| 1991 | 33,000 | 31,795 | 34,251 |
| 1992 | 25,255 | 24,170 | 26,388 |
| 1993 | 35,650 | 34,154 | 37,212 |
| 1994 | 13,421 | 12,537 | 14,368 |
| 1995 | 35,465 | 33,533 | 37,510 |
| 1996 | 8,259 | 7,451 | 9,153 |
| 1997 | 10,905 | 10,377 | 11,459 |
| 2005 | 14,680 | 12,585 | 17,120 |
| 2006 | 8,246 | 6,715 | 10,121 |
| 2007 | 9,384 | 7,461 | 11,793 |
| 2008 | 12,401 | 10,681 | 14,398 |
| 2009 | 14,115 | 12,793 | 15,573 |
| 2010 | 25,489 | 23,999 | 27,071 |
| 2011 | 26,571 | 24,949 | 28,301 |
| 2012 | 9,702 | 9,042 | 10,452 |
| 2015 | 1,242 | 1,077 | 1,456 |
| 2016 | 9,003 | 8,045 | 10,560 |
| 2017 | 76,931 | 68,444 | 86,952 |
| 2019 | 44,933 | 41,083 | 49,148 |

[1] Adjusted Lincoln-Peterson and Huggins closed capture models are referenced in Scheerer *et al.* 2012, p. 7. See Salzer 1992, p. 17; Salzer 1997, no pagination; Scheerer and Bangs 2011, p. 4; Scheerer *et al.* 2012, pp. 6–7; Scheerer *et al.* 2015, p. 3; Scheerer *et al.* 2016, p. 5; Meeuwig 2017, pers. comm.; Bangs 2019, pers. comm.

[2] Surveys were not conducted from 1998 to 2004, from 2013 to 2014, and in 2018.

Since the time of listing, two known mortality events occurred during periods when high air temperature and water coincided; during these events, maximum air and water temperatures exceeded 37 °C and 41 °C, respectively (Williams *et al.* 1989 p. 8–10, Scheerer *et al.* 2016, p. 9). Despite dramatic declines, population abundance quickly rebounded following these two mortality events. In the summer of 1987, a significant portion of larger adult fish were lost during a heat-related mortality event; however, juvenile fish were plentiful during a fall sampling event using fine meshed traps, leading researchers at the time to conclude that smaller fish were less susceptible to heat-related mortality (Williams *et al.* 1989, p. 14, Scoppetone *et al.* 1995, p. 43). In later years, traps were used with larger mesh that did not allow researchers to capture juvenile fish. Between 2005 and 2016, ODFW noted a significant negative relationship between water temperature and population abundance (Scheerer *et al.* 2016, p. 9), noting the duration of days higher than the suggested thermal tolerance of the species. Daily maximum water temperatures recorded during this period often exceeded the suggested Borax Lake chub thermal tolerance by a wide margin (Scheerer *et al.* 2016, p. 7). However, in the summer of 2017, water temperature was higher than the suggested thermal tolerance for a longer duration than any period in the 2005–2016 record, although peak daily maximum temperatures were lower than some years (ODFW 2020, in prep). June–August maximum air temperatures were similar to maximum air temperatures observed during the mortality events observed in 1989 (NW Climate Toolbox). Rather than the expected results of a decline in population abundance, the estimated population abundance in the fall of 2017 was twice as high as any previous estimate. Thus, while the 2015 estimate of 1,242 fish represents the lowest estimate on record, the pattern of variability observed over 3 decades of monitoring population abundance underscores the resiliency of this species and its ability to rebound quickly (see table, above).

With one exception, periodic surveys since 2005 have not identified any exotic species within Borax Lake (Scheerer and Jacobs 2005, 2006, 2007, 2008, 2009, and 2010; Scheerer and Bangs 2011; Scheerer *et al.* 2012, 2015, and 2016). However, in 2013, during shoreline surveys conducted by the ODFW, biologists noted a large fish with paired dorsal fins (presumably a bass) (Scheerer *et al.* 2013, p. 10). No additional sightings of the bass occurred during the ODFW surveys (Hurn 2014, pers. comm.) or during subsequent efforts to capture the bass (see *C. Disease or Predation,* below). Survival of the bass is believed to be unlikely given the high water temperatures in Borax Lake. No known occurrence of disease or predation affecting the population of Borax Lake chub has occurred since the time of listing (47 FR 43957; October 5, 1982). The best available scientific data indicate Borax Lake chub are a viable, self-sustaining population in habitat currently free from exotic species.

*Delisting Criterion 2:* Permanent protection for the 160-acre parcel of land to the north of Borax Lake (T37S, R33E, sec. 11) by TNC or other appropriate public resource agency.

This criterion has been met. In 1983, TNC leased two 160-ac (65-ha) private land parcels, one surrounding Borax Lake and the other immediately to the north of the lake. TNC purchased these two parcels in 1993, placing both parcels in public or conservation ownership and protection.

*Delisting Criterion 3:* Withdrawal of Borax Lake waters from appropriations.

This criterion has been met. With the acquisition of Borax Lake by TNC, surface waters on their land cannot be appropriated by others. Additionally, in 1991, the ODFW filed an application for the water rights to Borax Lake for conservation purposes. The water right was certified and issued to the Oregon Water Resources Department on December 16, 1998, for the purpose of providing habitat for the Borax Lake chub (OWRD 1998, entire).

*Delisting Criterion 4:* Establishment of a fence around the 640-acre critical habitat area to prevent vehicle entry.

This criterion has been mostly met. The Andrews/Steens Resource Area, Burns District BLM, has constructed facilities to modify public access and enhance public understanding of the Borax Lake area. The Burns District BLM closed access roads in the vicinity of Borax Lake, realigned the fence surrounding Borax Lake to limit vehicle access, and designated visitor parking. Partial funding for the fencing project came from the BLM's Threatened and Endangered Species Recovery Fund, an initiative started in 2010 that supports projects targeting key recovery actions for federally listed and candidate species occurring on BLM lands. The BLM plans to install interpretive signs at the designated parking area (USFWS *et al.* 2018, p. 7). The lake is now completely enclosed by fencing, although approximately 30 ac (12 ha) of critical habitat remains outside the fenced portion of the critical habitat, leaving approximately 0.6 mi (1 km) of road accessible to vehicles within designated critical habitat. The remaining area of the critical habitat will remain unfenced to provide for vehicle access, parking, and interpretative signs, while still protecting the Borax Lake environment. The BLM and ODFW will continue to assess the effectiveness of the vehicle closure for protection of the Borax Lake area. Barring any new information indicating that the existing fencing is insufficient to protect the Borax Lake chub, fencing of the remaining critical habitat appears to be unnecessary.

*Delisting Criterion 5:* Establishment of monitoring programs to survey habitats and fish population status.

This criterion has been met. Numerous studies of the ecology and habitat of Borax Lake have been conducted (Salzer 1992; Scoppettone *et al.* 1995; Furnish *et al.* 2002; Scheerer and Jacobs 2005, 2006, 2007, 2008, 2009, 2010; Scheerer and Bangs 2011; Scheerer *et al.* 2012, 2013). TNC conducted abundance estimates from 1986 through 1997. The ODFW conducted mark-recapture population surveys from 2005 through 2012, and again in 2015 and 2016; developed a survey protocol; and recommended a long-term monitoring strategy (Scheerer and Jacobs 2005, 2006, 2007, 2008, 2009, 2010; Scheerer and Bangs 2011; Scheerer *et al.* 2012, 2013, 2015, 2016). The ODFW also conducted surveys to monitor the condition of the lake shoreline, outflows, and adjacent wetlands. Additional physical data, including hydrologic information, substrate mapping, outflow monitoring, tracking of water levels, and geological and slope stability, were gathered in the 1990s (Scoppettone *et al.* 1995; Wilson 2000).

Following delisting, the Borax Lake chub post delisting monitoring (PDM) plan will facilitate the implementation of annual monitoring, except for surveys to estimate population abundance, which will be conducted once every 3 years over a 10-year period (four population surveys total), which will begin following the effective date of this rule (see **DATES**, above). Given the Borax Lake chub is a short-lived fish (few survive beyond 1 year; Scoppettone *et al.* 1995, p. 36), periodic monitoring over this time period will allow us to address any possible negative effects to the Borax Lake chub. Additionally, the chub experienced wide fluctuation in its population year-to-year. Limited point estimates for a widely fluctuating population can lead to difficulty assessing long-term trends. Therefore, although the minimum PDM period required by the Act is 5 years, as described above, we chose to extend the population abundance monitoring cycle to once every 3 years and the total monitoring period to 10 years to ensure we can accurately measure changes in trends.

Furthermore, with the understanding that the Borax Lake chub is a conservation-reliant species, the BLM, ODFW, and Service developed a CMP (USFWS *et al.* 2018) that outlines long-term management actions necessary to provide for the continued persistence of habitats important to Borax Lake chub. The CMP was agreed to, finalized, and signed by the BLM, ODFW, and Service in June 2018. The cooperating parties committed to the following monitoring actions: (1); Borax Lake chub population monitoring; (2) habitat and shoreline monitoring; (3) water temperature monitoring and assessment of potential impacts from climate change; and (4) lake-level monitoring and management to assure ODFW's water right is maintained (USFWS *et al.* 2018, p. 1). The CMP has no termination date. While the CMP provides agency commitments for long-term stewardship of Borax Lake and Borax Lake chub, the CMP is a voluntary agreement, and delisting is not dependent upon implementation of the actions described in the CMP.

*Delisting Criterion 6:* Lack of any new threats to the species or ecosystem for 5 consecutive years.

This criterion has been met. Although this final rule identifies climate change as a new potential stressor in the future, we have determined it is not operative on the species or its habitat currently, and is not anticipated to negatively affect the species in the foreseeable future. Increases in ambient air temperatures have caused impacts to Borax Lake chub when they coincided with periods of elevated temperatures from the geothermal inflow to the lake. The frequency of these impacts may potentially increase in the future. Subsequent to the publication of the proposed rule to delist Borax Lake chub (84 FR 6110; February 26, 2019), additional analyses of available 2017 data were conducted that resulted in a slightly modified interpretation (from that presented in the proposed rule) of the relationship between air and water temperature (ODFW 2020, in prep). The new analyses indicate that increased air temperature may slow the cooling of the geothermal waters at Borax Lake, and we anticipate that thermal refuge associated with shallow margin habitat and cool and cold water vents in the lake, along with the species' ability to rebound quickly following periods of elevated water temperatures, will provide resilience against any future potential effects of climate change. See our discussion under *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range,* below, for a more detailed description on potential effects of climate change.

**Summary of Changes From the Proposed Rule and Draft PDM Plan**

We considered all comments and information we received during the comment period for the proposed rule to delist Borax Lake chub (84 FR 6110; February 26, 2019). This resulted in the following changes from the proposed rule in this final rule:

- We made minor editorial changes and reorganized various sections of the rule to increase readability.
- We conducted additional analyses of available climate information.
- We revisited and reanalyzed available species life-history information along with air and water temperature data.

• We added additional details regarding the PDM and Borax Lake chub CMP.

This also resulted in the following changes to the PDM plan:

• We modified and extended the PDM from 5 years to 10 years and increased the frequency and type of information scheduled to be collected in order to increase our ability to detect changes in habitat or population abundance that may be attributed to climate change.

• We assessed the opportunities for a second population. Based in part on concerns expressed by public and peer reviewers regarding potential impacts of climate change, we determined establishing a secondary refuge population of Borax Lake chub through translocation would increase population redundancy, and spread risk inherent to any naturally rare or endemic species. Therefore, in addition to monitoring Borax Lake, the Service and our partners will evaluate the feasibility of establishing a secondary refuge population of Borax Lake chub at a yet-to-be-determined location in the Alvord Basin during the PDM period as a long-term conservation measure for the species. Although the species does not require this action to persist long-term, establishment of a secondary refuge population would provide additional assurance and conservations benefits. Similar steps have been taken for other naturally rare or endemic species.

**Summary of Factors Affecting the Species**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species on the List, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(e) if the best available scientific and commercial data indicate that: (1) The species is extinct; (2) the species does not meet the definition of an endangered or a threatened species; or (3) the listed entity does not meet the statutory definition of a species.

A recovered species is one that no longer meets the Act's definition of endangered or threatened. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following delisting or downlisting (*i.e.,* reclassification from endangered to threatened) and the removal or reduction of the Act's protections.

The Act does not define the term ''foreseeable future.'' Our proposed rule described ''foreseeable future'' as the extent to which we can reasonably rely on predictions about the future in making determinations about the future conservation status of the species. The Service since codified its understanding of foreseeable future in 50 CFR 424.11(d) (84 FR 45020). In those regulations, we explain the term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. The Service will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. The Service need not identify the foreseeable future in terms of a specific period of time. These regulations did not significantly modify the Service's interpretation; rather they codified a framework that sets forth how the Service will determine what constitutes the foreseeable future based on our long-standing practice. Accordingly, though regulations do not apply to the final rule for the Borax Lake chub because it was proposed prior to their effective date, they do not change the Service's assessment of foreseeable future for the Borax Lake chub as contained in our proposed rule and in this final rule. We think it is reasonable to define the foreseeable future for Borax Lake chub to be a range of 20 to 30 years based on the following analysis. In considering the foreseeable future as it relates to the status of the Borax Lake chub, we consider the factors affecting the species, historical abundance trends, and ongoing conservation efforts. Our period of record for monitoring the Borax Lake chub and its associated habitat extends back more than 30 years, which, when combined with our knowledge of factors

affecting the species, allows us to reasonably predict future conditions, albeit with diminishing precision over time. We also expect the ODFW, BLM, and TNC to continue to manage Borax Lake and to conserve Borax Lake chub. This expectation is based on both the fact that for over 3 decades, the ODFW, BLM, and TNC have taken actions benefiting the Borax Lake chub and the Borax Lake ecosystem, as well as the lack of termination date on the CMP signed by the three entities that facilitates conservation for the Borax Lake chub into the future. Furthermore, ODFW's water right for Borax Lake that protects water levels for the Borax Lake chub is held in perpetuity (OWRD 1998, entire). Finally, as discussed below, our understanding of the potential future effects of climate change on Borax Lake chub and its habitat is based on downscaled climate change projections that extend out approximately 30 years, to the year 2049 (Alder and Hostetler 2016, entire).

In examining threats to narrowly distributed endemic species such as the Borax Lake chub, we must consider that natural rarity (*i.e.,* a species that only exists in one or a few locations, though it may be abundant there), in and of itself, does not constitute a threat under the Act. Natural rarity may increase risk or vulnerability if threats are operative on the species or its habitat now or in the foreseeable future, but rarity, in and of itself, does not constitute a threat under the Act.

In the following analysis, we evaluate the status of the Borax Lake chub through the five-factor analysis of threats currently affecting the species, or that are likely to affect the species within the foreseeable future.

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

At the time of listing in 1982 (47 FR 43957; October 5, 1982), the primary threats to the Borax Lake chub consisted of potential impacts from geothermal energy development on BLM and private lands near Borax Lake, diversion of the lake's outflows by alteration of the shoreline crust, and potential development of a recreation facility. Since the time of listing, actions have been taken to reduce or eliminate these threats, as discussed below. We also include an analysis of the effects of climate change as a potential threat to habitat in the foreseeable future.

Recreation, Water Diversion, and Shoreline Habitat Alteration

The recreation facility discussed in the 1982 listing rule was never developed, and acquisition of the property by TNC eliminated the potential for development of a recreation facility at the Borax Lake site (Williams and Macdonald 2003, p. 12).

The ODFW filed for water rights at Borax Lake in 1991, and that water right is now certified and held in trust by the Oregon Water Resources Department (OWRD 1998, entire), to prevent further attempts at diverting the water and to ensure maintenance of the water elevation in Borax Lake (see ''Delisting Criterion 3'' discussion, above). The purpose of the water right is to provide the required habitat conditions for Borax Lake chub. The right is established under Oregon Revised Statute 537.341, with a priority date of August 21, 1991. The right is limited to the amount of water necessary to maintain a surface water elevation of 4,081 ft (1,244 m) above mean sea level. The certificate will remain in place in perpetuity. The certificate does not need beneficial use (*i.e.,* actively used) every 5 years like many other water right certificates. As long as Borax Lake chub exist in Borax Lake, the use is being applied as intended in the water right (J. Anthony 2020, pers. comm.). The right has been recorded in the State record of Water Right Certificates as 75919 (OWRD 1998, entire).

The 160-ac (65-ha) private land parcel containing Borax Lake was purchased by TNC in 1993 (Williams and McDonald 2003, p. 2). Subsurface mineral rights are included. Since TNC acquisition, surface waters on their land, upon which Borax Lake is located, can no longer be appropriated by others. Additionally, TNC ended the practice of actively diverting surface water from the eastern side of the lake to reduce the impact from prior water diversions (Williams and McDonald 2003, p. 7). The BLM designated the adjacent 600 ac (243 ha) of public lands as an ACEC for the conservation of Borax Lake chub, and the area was fenced to exclude livestock from entering the ACEC (see ''Downlisting Criterion 2'' discussion, above; BLM 2005a, p. 70).

Off-road vehicle damage along the lake shoreline has been documented in the past (Scheerer and Jacobs 2005, p. 6; 2006, p. 7; 2007, p. 6; 2008, p. 6; 2009, p. 8; 2010, p. 4; Scheerer and Bangs 2011, p. 9; Scheerer *et al.* 2012, p. 13; Scheerer *et al.* 2013, p. 6). As a result, in 2011, the BLM and TNC completed fencing the remaining perimeter of the lake and most of the associated critical habitat to exclude unauthorized vehicles (Scheerer and Bangs 2011, p. 11), and in 2013, they installed locks on all access gates (Scheerer *et al.* 2013, pp. 9–10). Due to the completion of the perimeter fence, the threat to Borax Lake chub and its habitat from shoreline habitat alteration by vehicles has been addressed.

Geothermal Development

Geothermal exploration and development has been pursued in the Alvord Known Geothermal Resource Area and specifically in the vicinity of Borax Lake from the early 1970s (Wassinger and Koza 1980, p. 1) to 2013. The Alvord Known Geothermal Resource Area is a 176,835-ac (71,563-ha) area within the Alvord Basin (Wassinger and Koza 1980, p. 7). Development of geothermal resources was considered in 1980, and exploratory wells were drilled in 1982 (47 FR 43957; October 5, 1982). In 1994, Anadarko proposed additional geothermal exploration and development, and the BLM prepared a notice of intent to prepare an environmental impact statement (EIS). After receiving public scoping comments, Anadarko withdrew its development proposal, and no EIS was written (Geisler 2009, pers. comm.).

The passage of the Steens Act in 2000, and the finalization of the BLM resource management plan (RMP) (BLM 2005a, p. 71), withdrew mineral and geothermal resources from development on Federal lands within the Alvord Known Geothermal Resource Area. The BLM retained 332 ac (134 ha) of land with high potential for geothermal resources west of Fields and within 4.5 mi (7.2 km) of Borax Lake open for leasable mineral and geothermal development (BLM 2005a, p. I–2). Private lands within this area are not affected by the mineral withdrawal.

In 2008, the BLM and DOGAMI received inquiries on behalf of private landowners in Alvord Basin regarding the development of geothermal resources. The BLM was contacted regarding electrical transmission and right-of-way (ROW) access to cross BLM lands in order to explore and develop commercial geothermal electrical power (Bird 2008, pers. comm.). The developer, Pueblo Valley Geothermal LLC, met with the BLM in 2008, to discuss their interest in obtaining an ROW permit to access private land and construct a power plant. Although the Steens Act and subsequent RMP withdrew the Alvord Known Geothermal Resource Area from geothermal development, the RMP could allow an ROW permit because the area in question is not within the Cooperative Management and Protection Area boundary. ROWs are a valid use of public lands under sections 302 and 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C.

1701 *et seq.*), as amended (BLM 2005a, p. 59). The BLM would be responsible under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) to analyze any proposed ROW project, including the connected actions, such as exploratory well drilling and power line construction.

The proposed power plant was anticipated to generate 1 to 10 megawatts (Hall 2011, pers. comm.). Pueblo Valley Geothermal LLC acquired a 53-year lease on approximately 2,000 ac (809 ha) from landowners located south of Alvord Lake, and within 3 mi (4.8 km) and as close as 1 mi (1.6 km) from Borax Lake (Hall 2009, pers. comm.). Pueblo Valley Geothermal LLC also placed an advertisement in the publication ''Geothermal Energy Weekly'' seeking investors for a 20- to 25-megawatt geothermal facility (Geothermal Energy Association 2010, no pagination). The developer indicated in 2011 that they were progressing with resource assessments regarding the total megawatt and economic potential (Hall 2011, pers. comm.). No formal permit applications were received by the BLM or DOGAMI in 2011 (Houston 2008, pers. comm.; Houston 2010, pers. comm.; Houston 2011, pers. comm.), and as of 2018, we are not aware of any such applications.

Pueblo Valley Geothermal LLC submitted an informal proposal to the BLM on January 31, 2012, seeking to acquire 3,360 ac (1,360 ha) of BLM land in the vicinity of the Borax Lake geothermal aquifer in the interest of developing an air-cooled binary geothermal plant to produce 20 to 25 megawatts of electricity (McLain 2012, pers. comm.). The BLM responded with a letter on March 14, 2012, explaining that due to various reasons including resource concerns, funding, and staffing priorities, such a land exchange was not feasible at that time (Karges 2012, pers. comm.). Pueblo Valley Geothermal LLC indicated to us that the proposal to develop geothermal energy on private land in the vicinity of Borax Lake was not active (Hall 2014, pers. comm.). The Oregon Secretary of State Office maintains an online business registry of Limited Liability Company (LLC) companies (Oregon Secretary of State 2019). The list was consulted, and we found that the company, Pueblo Valley Geothermal LLC, filed an article of dissolution on December 26, 2013. A review of the Harney County Assessor's property records show that 320 ac (129 ha) of land previously leased by Pueblo Valley LLC, which is approximately 1 mi (1.6 km) west of Borax Lake, is now owned by Oregon Geothermal LLC. We do not have any new information on permit applications from Oregon Geothermal LLC or any other new geothermal proposals that may arise in the foreseeable future.

Potential impacts resulting from geothermal development that were identified at the time of listing include effects to water elevation in Borax Lake due to the interconnecting aquifers or springs. Drilling could disrupt the hot water aquifer that supplies Borax Lake. Potential impacts from geothermal energy drilling could include changes to the aquifer pressure or temperature, and the potential to lessen or eliminate inflows to the lake from the geothermal aquifer. Changes to water flow and water temperature may have an adverse impact on the Borax Lake chub. Although the species tolerates thermal waters, excessive warming of the lake's water could cause adverse physiological effects, and, at extremes, would be lethal to the Borax Lake chub.

In summary, proposals to develop geothermal energy resources in the Borax Lake vicinity have occurred sporadically in the 1970s, in the 1980s, in 1994, and in 2008 through 2012. However, none of these proposals has moved forward with permitting and implementation over a 4-decade period, and this history leads us to conclude that the likelihood of geothermal energy development now and in the foreseeable future is low. Furthermore, while geothermal development in the vicinity of Borax Lake is considered a potential threat to the Borax Lake chub, the precise effects of possible geothermal development on the species are uncertain and unpredictable. The potential effects to the species would depend upon the specifics, such as the scale of the project and proximity to Borax Lake, of any geothermal energy development that might proceed to the implementation phase. Depending on the particular circumstances of any particular project, such development could potentially have a negative effect on the species, or it might have no or negligible effects. The effects of any future geothermal project proposal on Borax Lake chub would be assessed based on specific project details and other data available at the time. If an assessment suggested a future geothermal project would likely cause significant risk to Borax Lake and the well-being of Borax Lake chub, and existing regulatory mechanisms did not deter or result in modifications to the development to minimize or eliminate likelihood of impacts to the chub, we have the discretion to use the emergency listing authorities under section 4(b)(7) of the Act, such as we used in the May 28, 1980, emergency listing of Borax Lake chub (45 FR 35821). The possibility of geothermal development in the vicinity of Borax Lake will continue to represent a potential threat to Borax Lake chub and its habitat, but we have determined the likelihood of this threat becoming operative in the foreseeable future is low.

Effects of Climate Change

The Intergovernmental Panel on Climate Change (IPCC) concluded that the evidence for warming of the global climate system is unequivocal (IPCC 2013, p. 3). Numerous long-term climate changes have been observed including changes in arctic temperatures and ice, widespread changes in precipitation amounts, ocean salinity, wind patterns, and aspects of extreme weather including droughts, heavy precipitation, and heat waves (IPCC 2013, p. 4). The general climate trend for North America includes increases in mean annual temperatures and precipitation and the increased likelihood of extreme weather events by the mid-21st century (IPCC 2014, pp. 1452–1456). Changes in climate can have direct or indirect effects on species; may be positive, neutral, or negative; and may change over time, depending on the species and other relevant considerations such as the effects of interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19).

Global climate projections are informative and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (*e.g.,* IPCC 2007, pp. 8–12). Therefore, we use ''downscaled'' projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling).

Downscaled projections as of 2016 were available for our analysis from the U.S. Geological Survey (Alder and Hostetler 2016, entire). The National Climate Change Viewer is based on the mean of 30 models, which can be used to predict changes in air temperature and precipitation for the Alvord Lake basin in Harney County, Oregon, based on two emission scenarios, RCP4.5 and RCP8.5. Scenario RCP4.5 is a moderate emissions scenario (where atmospheric concentrations of greenhouse gases are

expected to equal approximately 650 parts per million (ppm) after the year 2100), and RCP8.5 is the most aggressive emissions scenario (in which greenhouse gases continue to rise unchecked through the end of the century) (Alder and Hostetler 2016, entire).

With regard to our analysis for the Borax Lake chub, we used both the RCP8.5 and RCP4.5 emission scenarios to evaluate projected air temperature increases. Given the timeframe of our analysis (through 2049), both models predicted similar temperature projections. The RCP8.5 emissions scenario predicted that during the period from 2025 to 2049, the July mean model maximum air temperature will increase by 2.4 °C (4.3 °F) from the historical mean as compared to projected increase of 1.9 °C (3.3 °F) under the RCP4.5 emissions scenario. The models predict very little change in the mean annual precipitation and runoff for the Alvord Lake basin (Alder and Hostetler 2016, entire).

The relationship between air temperature, water temperature, and habitat suitability at Borax Lake is highly dynamic and not fully understood. As a geothermal hot spring, water temperatures at Borax Lake are likely influenced by the temperature and the rate of outflow from the primary hot water vent and the other secondary cool water vents, ephemeral thermoclines between areas with relatively cool and warm water, and wind direction and velocity. A seasonal component exists in both the magnitude and temperature of inflow from the main spring vent, and these relationships are correlated with seasonal runoff in the Alvord Basin (Cummings *et al.* 1993, p. 120) and seasonal air temperature (Williams *et al.* 1989, p. 16). Water temperature from the main vent can vary from 40 to 148 °C (104 to 298 °F; Perkins *et al.* 1996, p. 2), and air temperature likely reduces the water temperature at the surface of the lake.

The effects that future increases in air temperature may have on Borax Lake water temperatures is unknown. Although surface water at the lake appears to be cooled by the air, an increase in air temperature does not necessarily correspond to an increase in water temperatures at Borax Lake over a short-term time scale as other factors may impact lake temperature, including wind, temperature of water from the vent, and ephemeral thermoclines (Perkins *et al.* 1996, p. 15). Climate change predictions for the region show an increase in wind velocity, but the uncertainty surrounding the relationship between wind velocity, air temperature, and water temperature prevent predictions on the effects of such an increase on the temperature of Borax Lake. Currently, water temperatures often exceed the suggested (Williams and Bond 1983. p. 412) thermal maximum of the species by a wide margin.

The lake experiences high spatial variability in water temperatures, caused in part by multiple small cold and cool water vents, besides the main vent. Borax Lake chub seek out relatively cooler water during high temperature events (Williams *et al.* 1989, p. 17). However, water temperature has periodically exceeded the suggested thermal tolerance of the species across all monitoring locations. Since the time of listing, two known mortality events occurred during periods when high air and water temperature coincided. Although the abundance declines associated with these events were substantial, the population quickly rebounded. Water temperature monitoring between 2005 and 2016 showed a potential negative relationship between abundance and water temperature. However, in the summer of 2017, water temperature was higher than the suggested thermal tolerance for a longer duration than any period in the 2005–2016 record, although peak daily maximum temperatures were lower than some years (ODFW 2020, in prep). June-August maximum air temperatures were similar to maximum air temperatures observed during the mortality events observed in 1989 (Alder and Hostetler 2019, unpaginated). Rather than the expected results of a decline in population abundance, the estimated population abundance in the fall of 2017 was twice as high as any previous estimate.

Borax Lake chub may be adapted to thermal tolerance, and suggested that annual progressive acclimation to increased temperature may aid survival during periods of high temperature (Williams *et al.* 1989, p. 17). Smaller fish appear to be less susceptible to heat-related mortality (Williams *et al.* 1989, p. 14). The rapid maturity of juvenile fish and prolonged spawning period (Williams and Bond 1983, p. 413; Scoppetone *et al.* 1995, p. 41; Perkins *et al.* 1996, p. 18) may enable successful spawning during consecutive hot years, even if the population of larger, and presumably older, fish is reduced.

Although a specific analysis has not been conducted to determine the amount and suitability of thermal refuge habitat that may be available under various lake and air temperature conditions, the availability of shallow margin habitat around the perimeter of the lake, along with the outflow channel and wetland, likely provides thermal refuge (*i.e.,* cooler water) habitat for the species during periods when warm air and water temperatures coincide (Scheerer and Bangs 2011, pp. 5–8; Scheerer *et al.* 2012, pp. 7–11). In addition, cool and cold water vents within portions of the lake that likely contribute to moderating lake temperatures and provide additional areas of thermal refuge (Scheerer 2018, pers. comm.). While there is evidence these cool and cold water vents, as well as warm and hot vents within the lake (in addition to the primary vent) vary in temperature year to year, the aggregate of these thermal refuge habitats, along with the species' ability to rebound quickly following periods of higher than normal air and water temperatures, are anticipated to provide resilience against potential future effects of climate change.

Although there are no currently available climate projections on the persistence of springs into the future, changes to precipitation, drought, aquifer recharge, or vegetative community around Borax Lake as a result of climate change would not likely have an impact on the Borax Lake chub. Borax Lake is perched above the valley floor, there is no inflow of water from above-ground sources, and the vegetative community is not likely to change due to the temperature increases predicted.

Summary of Factor A

Since the time of listing in 1982 (47 FR 43957; October 5, 1982), actions have been taken to reduce or eliminate the destruction and modification of Borax Lake chub habitat. This includes the acquisition of Borax Lake and surrounding lands by TNC, the BLM's designation of adjacent lands as an ACEC, protection of subsurface and surface waters, protection from mineral withdrawal, and closure of fragile lands to livestock grazing and unauthorized vehicle access. Although these measures have removed and minimized various threats to Borax Lake and surrounding lands, the potential for geothermal development, and consequent possible impacts to Borax Lake chub and its habitat, remains. The possibility of geothermal development in the vicinity of Borax Lake will continue to represent a potential threat to Borax Lake chub and its habitat, but we have determined the likelihood of this threat becoming operative in the foreseeable future is low.

Increases in the ambient air temperature from climate change could slow the cooling of the geothermal waters in Borax Lake. Cooling of the waters of Borax Lake, especially the shallow margin areas including several overflow channels and the wetland, is important to the Borax Lake chub during warm times of the year given that temperatures in some areas of the lake often exceed the thermal maximum for this species (Scheerer and Bangs 2011, p. 8) reported as 34.5 °C (94 °F) (Williams and Bond 1983, p. 412).

Two previous mortality events were observed following periods when high water temperature and air temperature coincided. It is reasonable to assume the frequency of these events due to climate change may increase such that there is a possibility for consecutive year events of adult population abundance decline associated with abnormally warm air and water temperatures. We anticipate that thermal refuge associated with shallow margin habitat and cool and cold water vents in the lake, along with the species' ability to rebound quickly following periods of higher than normal air and water temperatures, will provide resilience against potential future effects of climate change.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Overutilization for commercial, recreational, scientific, or educational purposes was not a factor in listing (47 FR 43957; October 5, 1982) and is currently not known to be a threat to the Borax Lake chub, nor is it likely to become so in the foreseeable future.

*C. Disease or Predation*

Disease was not a factor in listing of the Borax Lake chub (47 FR 43957; October 5, 1982) and is currently not known to be a threat to Borax Lake chub, nor is it likely to become so in the foreseeable future.

Likewise, predation was not noted as a factor in the listing of Borax Lake chub (47 FR 43957; October 5, 1982). Several native species that are likely predators of the Borax Lake chub, such as garter snakes and common grebes, are found in and around Borax Lake. The Borax Lake chub evolved in this habitat in the presence of these predatory species, and the species has persisted in the presence of these predators. Although we do not believe predation is a threat currently or in the foreseeable future, a single observation of an exotic fish did occur in 2013 (see ''Delisting Criterion 1,'' above, for more discussion). Exotic fish were not observed in repeated surveys, and no known impacts to Borax Lake chub occurred. The high water temperatures and water chemistry in Borax Lake, which likely limited the long-term survival of this exotic fish, also limit the overall likelihood of establishment of exotic species in Borax Lake. The establishment of a perimeter fence around Borax Lake by the BLM and TNC in 2011 further reduced the likelihood of purposeful or accidental introductions of exotic species to the extent that we conclude that the threat of predation has been addressed.

As noted previously in this rule, the BLM, ODFW, and the Service developed a CMP that will guide future monitoring for nonnative species, monitoring of Borax Lake chub, vehicle access restrictions, and public outreach and education (USFWS *et al.* 2018). While the CMP provides agency commitments for long-term stewardship of Borax Lake and Borax Lake chub, this delisting is not dependent upon implementation of the actions described in the CMP.

*D. The Inadequacy of Existing Regulatory Mechanisms*

Under this factor, we examine the stressors identified within the other factors as ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts. Section 4(b)(1)(A) of the Act requires that the Service take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species.'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, regulations, and other such binding legal mechanisms that may ameliorate or exacerbate any of the threats we describe in threat analyses under the other four factors or otherwise enhance the species' conservation. Our consideration of these mechanisms is described in detail within each of the threats or stressors to the species (see full discussion under this section, Summary of Factors Affecting the Species). For currently listed species that are being considered for delisting, we consider the adequacy of existing regulatory mechanisms to address threats to the species absent the protections of the Act. We examine whether other regulatory mechanisms would remain in place if the species were delisted, and the extent to which those mechanisms will continue to help ensure that future threats will be reduced or minimized.

The following provides an overview of the existing regulatory protections that protect the Borax Lake ecosystem and Borax Lake chub.

The Nature Conservancy

The 160-ac (65-ha) private land parcel containing Borax Lake and the 160-ac (65-ha) parcel to the north of the lake were purchased by TNC in 1993. Subsurface mineral rights are included in the deed. Since TNC acquisition, surface waters on their land, upon which Borax Lake is located, can no longer be appropriated by others. Additionally, TNC ended the practice of actively diverting surface water from the eastern side of the lake to reduce the impact from prior water diversions.

BLM—Federal Land and Rights-of-Way

The passage of the Steens Act of 2000 and the completion of the Steens Andrews RMP withdrew the Alvord KGRA from mineral and geothermal exploration and development (BLM 2005a). The Steens Act congressionally designated a mineral withdrawal area encompassing 900,000 ac (364,217.1 ha) of the planning area on BLM-administered lands. The mineral withdrawal area contains the majority of the Alvord KGRA, including Borax Lake and surrounding public lands, with the exception of 332 ac (134.4 ha) located approximately 4.5 mi (7.242 km) from Borax Lake (BLM 2005a). Private lands within this area are not affected by the mineral withdrawal. Approximately 2,000 ac (809.4 ha) of privately owned land occur within a 3-mi (4.83-km) radius of Borax Lake and are not subject to BLM's withdrawal. The BLM has responsibility to review all applications for geothermal development within the Alvord KGRA that occur on BLM lands and some applications for development on private lands if the development requires an ROW for access or transmission lines across BLM-managed lands. ROWs are a valid use of public lands under sections 302 and 501 of the Federal Land Policy and Management Act of 1976 (BLM 2005a). The BLM would be responsible under the National Environmental Policy Act to analyze the environmental impacts of any proposed ROW project including the connected action (*i.e.,* energy development on private lands). By seeking an ROW, the development of geothermal energy or mineral withdrawal on private lands would be subject to consultation. All the private land in proximity to Borax Lake is surrounded by BLM land; thus any development on these private lands would require a BLM ROW to move energy out of the development area. The application for an ROW would trigger consultation with the Service, and therefore potential impacts of the

development to Borax Lake chub would be assessed.

In 1983, the BLM designated 520 ac (210 ha) of public land surrounding Borax Lake as an ACEC to protect Borax Lake chub and its habitat. In 2005, the record of decision for the RMP for the Andrews Resource Area added 80 ac (32 ha), for a total 600-ac (243-ha) Borax Lake ACEC (BLM 2005a, p. 70). Despite being delisted, the Borax Lake chub still meets the BLM's special status species criteria and thus the ACEC will still meet all ACEC designation criteria. While an ACEC designation can be removed or modified through a land and resource management plan (RMP) update, the Burns District currently has no plans to modify the boundary or change the ACEC in any way (M. Anthony 2020, pers. comm.).

Off-road vehicle damage along the lake shoreline was documented in the past (Scheerer and Jacobs 2005, p. 6; 2006, p. 7; 2007, p. 6; 2008, p. 6; 2009, p. 8; 2010, p. 4; Scheerer and Bangs 2011, p. 9; Scheerer *et al.* 2012, p. 13; Scheerer *et al.* 2013, p. 6). As a result, in 2011, the BLM and TNC completed a perimeter fence surrounding the lake and most of the associated critical habitat to exclude unauthorized vehicles, and in 2013, they installed locks on all access gates. Due to the completion of the perimeter fence, the threat to the Borax lake chub from shoreline habitat alteration by vehicles has been addressed.

State of Oregon, Department of Geology and Mineral Industries (DOGAMI)

Oregon Revised Statute (ORS) chapter 522 authorizes DOGAMI to control drilling, re-drilling, and deepening of wells in Oregon for the discovery and production of geothermal resources. Under this authority, a developer undertaking geothermal exploration on all land (public and private) must first obtain a permit from DOGAMI (Oregon Administrative Rule (OAR) 632–020–0028). DOGAMI process requires circulation of any permit application to other State agencies that manage natural resources such as the Water Resources Department, ODFW, Department of Environmental Quality, State Parks and Recreation Department, Department of Land Conservation and Development, Department of State Lands, and the governing body of the county and geothermal heating district in which the well will be located (ORS 522.125(1)). Any of these agencies can suggest conditions under which a permit should be granted or denied. DOGAMI is required to take State agency comments into consideration when deciding to grant a permit (OAR 632–020–0170). As part of the conditions for geothermal development on private land, a developer is required by DOGAMI to provide baseline information needed to show there would be no connection to geothermal or groundwater continuity in areas of environmental concern (*i.e.,* Borax Lake or the BLM's designated ACEC near Borax Lake). Therefore, the DOGAMI is required to accept comment, and consider protective measures. This additional review through the DOGAMI process may benefit the Borax Lake chub through the addition of conservation measures necessary to obtain a permit for geothermal exploration.

State of Oregon, Oregon Department of Energy's Energy Facility Siting Council (EFSC)

The EFSC has regulatory and siting responsibility for proposed generating facilities greater than 35 megawatts in Oregon. The OAR–345–022–0040 prohibits the EFSC from issuing site certificates for energy development in protected areas such as BLM's ACECs and State natural heritage areas such as TNC's Borax Lake Preserve. For proposed energy developments in unprotected areas, the EFSC applies Division 22 siting standards for fish and wildlife habitat (OAR 345–022–0060), threatened and endangered species (OAR 345–022–0070), and general standards of review (OAR 345–022–000). Specific to Borax Lake chub, OAR 345–022–0060 requires that a proposed facility comply with the habitat mitigation goals and standards of the ODFW as defined in OAR 635–415–0025. The ODFW defines Borax Lake chub habitat as a Habitat Category 1 under the habitat mitigation standard. Habitat Category 1 is defined as irreplaceable, essential habitat for a species regardless of listing status, and will not change when the species is delisted. The mitigation goal for Habitat Category 1 is no loss of either habitat quantity or quality. The ODFW is required to protect habitats in Category 1 by recommending or requiring: (1) Avoidance of impacts through alternatives to the proposed development action, or (2) no authorization of the proposed development action if impacts cannot be avoided. To issue a site certificate, the EFSC must find that the design, construction, and operation of the facility, taking into account mitigation, are consistent with the fish and habitat mitigation goals and standards of OAR 635–415–0025 (OAR 345–022–0060 Fish and Wildlife Habitat).

State of Oregon, Oregon Department of Fish and Wildlife

The Borax Lake chub was listed as endangered in 1987, and then reclassified to threatened in 2017, under the Oregon Endangered Species Act (Oregon ESA; ORS 496.012), which prohibits the ''take'' (killing or obtaining possession or control) of listed species without an incidental take permit. The State of Oregon determined that Borax Lake chub fit the definition of threatened rather than endangered due to substantial progress in conservation and recovery of the species. The State criteria for recovery of Borax Lake chub are met due to the following: (1) TNC owns and protects the parcel containing Borax Lake and the parcel to the north of the lake; (2) natural reproductive potential is not endangered; (3) primary habitat is protected; (4) habitat is protected from commercial use; (5) public access is restricted to foot traffic; (6) no harvest is allowed; (7) only infrequent scientific or educational use occurs; (8) most surrounding land is protected from geothermal development on Federal lands; and (9) water rights of the lake were obtained by the ODFW for the purpose of conserving Borax Lake chub.

The Oregon ESA applies to actions of State agencies on State-owned or -leased land, and does not impose any additional restrictions on the use of private lands (ORS 496.192). The Oregon ESA is implemented by the State independently from the Federal Endangered Species Act; thus, this final rule does not directly impact the current State listing of Borax Lake chub. Under the Oregon ESA, State agencies (other than State land-owning or land-managing agencies) determine the role they may serve in contributing toward conservation or take avoidance (OAR 635–100–0150). The Oregon Endangered Species List is a nonregulatory tool that helps focus wildlife management and research with the goal of preventing species from declining to the point of extinction (ORS 496.171, 496.172, 496.176, 496.182, and 496.192). The ODFW commission reviews Oregon ESA-listed species at least once every 5 years to assess status relative to the recovery criteria (OAR 635–100–0120). If the ODFW commission determines that removal from the Oregon ESA list is warranted, the commission is required to consult with relevant State and Federal agencies, cities and counties, federally recognized tribes, the Natural Heritage Advisory Council, and other States, organizations, or individuals that have a common interest in the species before making a final

decision (OAR 635–100–0105). While a Federal delisting under the Act does not inherently lead to a delisting under the State ESA, it is reasonable to assume this may be considered by the ODFW commission in the future. Given the Oregon ESA does not impose regulations on private lands, the Service does not anticipate that a potential Oregon ESA delisting would alter or reduce current or future regulatory protections for the Borax Lake chub.

Per OAR 635–415–0025 (Habitat Mitigation Policy), the ODFW would provide comments and recommendations on risks to all native fish and wildlife from a proposed geothermal development project in the Alvord Basin through all State and county permitting processes. If there was any indication that a proposed geothermal development project would have a geothermal or groundwater connection with Borax Lake, the ODFW would recommend that alternatives be developed or that the action not be permitted.

The ODFW filed for water rights at Borax Lake in 1991, and that right is now certified to the Oregon Water Resources Department (OWRD 1998, entire) to prevent further attempts at diverting the water and to ensure maintenance of the water elevation in Borax Lake (see ''Delisting Criterion 3'' discussion, above). The purpose of the water right is to provide the required habitat conditions for the Borax Lake chub. The right is established under ORS 537.341, with a priority date of August 21, 1991. The right is limited to the amount of water necessary to maintain a surface water elevation of 4,081 ft (1,244 m) above mean sea level. The right has been recorded in the State record of Water Right Certificates as 75919 (OWRD 1998, entire). The certificate will remain in place in perpetuity. The certificate does not need beneficial use (*i.e.,* actively used) every 5 years like many other water right certificates. As long as Borax Lake chub exist in Borax Lake, the use is being applied as intended in the water right (J. Anthony 2020, pers. comm.).

The ODFW's Native Fish Conservation Policy calls for the conservation and recovery of all native fish in Oregon (ODFW 2002, entire), including Borax Lake chub. The Native Fish Conservation Policy requires that the ODFW prevent the serious depletion of any native fish species by protecting natural ecological communities, conserving genetic resources, managing consumptive and non-consumptive fisheries, and using hatcheries responsibly so that naturally produced native fish are sustainable (OAR 635–007–0503). The policy is implemented through the development of collaborative conservation plans for individual species management units that are adopted by the Oregon Fish and Wildlife Commission. To date, the ODFW has implemented this policy by following the federally adopted recovery plan and will continue to conserve Borax Lake chub according to the State rules for conserving native fish and more specifically the commitments made by the ODFW in the CMP. The State of Oregon Wildlife Diversity Plan (OAR 635–100–0080), Oregon Native Fish Conservation Policy (OAR 636–007–0502), and the Oregon Conservation Strategy (ODFW 2016) provide additional authorities and protective measures for the conservation of native fish, including the Borax Lake chub.

Thus, the protections of ODFW's Native Fish Conservation Policy, and policy on geothermal development permitting, as well as the establishment of a dedicated water right for conservation at Borax Lake, provide for significant ongoing protection and allow for critical review of future development projects. In the event ODFW delists the species under the State ESA, we conclude that none of these protections will be weakened due to the fact Borax Lake chub will still meet criteria under these policies.

Additionally, although not a regulatory mechanism, the CMP, which was prepared jointly and signed by the BLM, ODFW, and Service, is a conservation measure that will guide future management and protection of the Borax Lake chub, regardless of its State or Federal listing status. The CMP, as explained in more detail under Recovery and Recovery Plan Implementation, above, identifies actions to be implemented by the BLM, ODFW, and Service to provide for the long-term conservation of the Borax Lake chub. The approach of developing an interagency CMP for the Borax Lake chub to promote continued management post-delisting is consistent with a ''conservation-reliant species,'' described by Scott *et al.* (2005, pp. 384–385) as those that have generally met recovery criteria but require continued active management to sustain the species and associated habitat in a recovered condition.

Summary of Factor D

Significant regulatory protections are provided to the Borax Lake ecosystem from the conservation ownership of Borax Lake and surrounding lands by TNC (320 ac; 129 ha), withdrawal of Borax Lake waters from appropriation, the mineral withdrawal within the Alvord KGRA under the 2000 Steens Act, and the mineral withdrawal and management guidelines under the BLM's ACEC around Borax Lake (600 ac; 243 ha); these protections remain unchanged with the delisting of the Borax Lake chub under the Act. While State and Federal regulatory mechanisms exist that would protect the Borax Lake ecosystem from potential effects of development of geothermal resources on 2,000 ac (809 ha) of private land in proximity to Borax Lake, they do not guarantee a development proposal would not legally proceed to implementation. They do, however, ensure State and Federal natural resource agencies will be made aware of any proposals moving forward for permitting (*e.g.,* DOGAMI) and that comments by applicable State and Federal resource agencies will be considered. As noted previously, DOGAMI requires geothermal developers to provide baseline information to show there would be no connection to geothermal or groundwater in areas of environmental concern (*e.g.,* Borax Lake or the BLM's designated ACEC near Borax Lake). Similarly, the EFSC requires that a proposed facility comply with the habitat mitigation goals and standards of the ODFW as defined in OAR 635–415–0025. These regulatory mechanisms do not completely remove potential risk to the Borax Lake chub from geothermal development, but they do reduce the likelihood of impact from development on private lands in the vicinity of Borax Lake.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The 1982 listing rule (47 FR 43957; October 5, 1982) did not identify any other natural or human-caused factors affecting the Borax Lake chub or its habitat. No threats have arisen under this threat factor since that time, and none are anticipated in the foreseeable future. Potential impacts of climate change are addressed in this final rule under *A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range,* above.

Overall Summary of Factors Affecting the Borax Lake Chub

The primary factors that threatened the Borax Lake chub at the time of listing (47 FR 43957; October 5, 1982) were potential impacts from geothermal energy development, diversion of the lake's outflows by alteration of the shoreline crust, and potential development of a recreation facility.

Most of these threats or potential threats have been removed or ameliorated by the implementation of actions identified in the Borax Lake Chub Recovery Plan (see the discussion of downlisting criteria under Recovery and Recovery Plan Implementation, above). Actions that have been taken to reduce or eliminate the destruction and modification of Borax Lake chub habitat (Factor A) include acquisition of Borax Lake by TNC, the BLM's designation of adjacent lands as an ACEC, protection of subsurface and surface waters, protection from mineral withdrawal, and closure of fragile lands to livestock grazing and unauthorized vehicle access.

Proposals to develop geothermal energy resources in the vicinity of Borax Lake have occurred sporadically over the last 4 decades, and for that reason, it is reasonable to expect additional proposals to develop geothermal energy are likely in the foreseeable future. However, none of these proposals has moved forward with implementation over a 4-decade period, and this history leads us to conclude that the likelihood of geothermal energy development in the vicinity of Borax Lake in the foreseeable future is low. Furthermore, while geothermal development in the vicinity of Borax Lake is considered a potential threat to the Borax Lake chub, the precise effects of possible geothermal development on the species are uncertain and unpredictable given the unknown nature of geothermal fluids and their behavior deep underground. The response of the species would depend upon the specifics (*e.g.,* scale of the project and proximity to Borax Lake) of any geothermal energy development that might proceed to the implementation phase. Depending on the circumstances of any particular project, such development could potentially have a negative effect on the species, or it might have no or negligible effects. The possibility of geothermal development in the vicinity of Borax Lake will continue to represent a potential threat to Borax Lake chub and its habitat, but we have determined the likelihood of this threat becoming operative in the foreseeable future is low.

Climate change may increase the frequency and duration of above average air temperatures; when these periods coincide with warm geothermic water temperature, the combined effect may lead to reductions in the amount and suitability of habitat for Borax Lake chub. Water temperatures regularly exceed the proposed thermal maximum for the species, and above average air temperatures may reduce the cooling of the water at the surface. However, shallow-water thermal refuge habitats around the margins of Borax Lake (the overflow channel and wetland), cool and cold water vents within the lake, increased wind velocity predicted through climate change, along with the species' ability to rebound quickly following periods of low population abundance, are expected to provide resilience against potential future effects of climate change to the Borax Lake chub.

Factor B (overutilization for commercial, recreational, scientific, or educational purposes), Factor C (disease or predation), and Factor E (other natural or manmade factors affecting its continued existence) were not identified as threat factors in the listing of Borax Lake chub in 1982 (47 FR 43957; October 5, 1982), and these factors are currently not known to be threats to the Borax Lake chub now or in the foreseeable future.

We conclude that existing regulatory mechanisms (Factor D) provide significant protections to Borax Lake chub and its habitat, especially on Federal lands, and address most of the reasons that the species was listed; we have no information to suggest that these regulatory mechanisms will change in the foreseeable future. No regulatory mechanisms are in place that fully prevent geothermal development on private lands in the vicinity of Borax Lake. However, we determined that this potential threat is not likely to manifest in the foreseeable future; therefore, we find that there is no need for additional regulatory mechanisms to address geothermal development.

## Summary of Comments and Recommendations

In our proposed rule published on February 26, 2019 (84 FR 6110), we requested that all interested parties submit written comments on the proposal by April 29, 2019. We also requested public comments on the draft post-delisting monitoring plan. We contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We did not receive any requests for a public hearing.

During the comment period, we received 22 letters or statements directly addressing the proposed action, including 3 from peer reviewers, 1 from the State, and 18 from the public. All comments are posted at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2017–0035. Some public commenters and the State support the delisting of the Borax Lake chub, some did not state whether or not they support the delisting, and others do not support delisting, although a subset of these would support downlisting to threatened status. The 3 peer reviewers do not support the delisting; however, two peer reviewers would support the species' downlisting to threatened status under the Act.

We reviewed all comments we received from the peer reviewers, the State, and the public for substantive issues and new information regarding the Borax Lake chub. Substantive comments we received during the comment period are addressed below and, where appropriate, are incorporated directly into this final rule and the post-delisting monitoring plan.

### *State Comments*

Section 4(b)(5)(A)(ii) of the Act states that the Secretary must give actual notice of a proposed regulation under section 4(a) to the State agency in each State in which the species is believed to occur, and invite the comments of such agency. Section 4(i) of the Act directs that the Secretary will submit to the State agency a written justification for his or her failure to adopt regulations consistent with the agency's comments or petition. We solicited and received comments from the Oregon Department of Fish and Wildlife (ODFW). The ODFW supports our delisting of the Borax Lake chub.

### *Peer Review and Public Comments on our Proposal To Delist the Borax Lake Chub*

*Comment (1):* Three peer reviewers and four public commenters identified climate change as a potential threat to the long-term persistence of the species and stated that Federal protection under the Act should be maintained until we have a complete understanding of the potential impacts of climate change. The peer reviewers and commenters identified multiple potential effects of climate change, primarily the influence of increased air temperature on water temperature, and its influence on the long-term persistence of Borax Lake chub due to impacts on survival, recruitment, and habitat suitability.

*Response:* Climate change remains a concern for the long-term conservation of many aquatic species, including the Borax Lake chub. However, in the case of the Borax Lake chub, we do not find this concern rises to the level of justifying the retention of the species' status as endangered, or reclassifying it to threatened status. Although we do not fully understand the relationship between air temperature and other factors influencing water temperature at

Borax Lake, nor the mechanisms that enable Borax Lake chub to persist during periods of high water temperature, the species has shown tremendous capacity to recover from periods of thermal stress, as we have detailed above under Summary of Factors Affecting the Species and the ''Delisting Criterion 1'' discussion. While our lack of complete knowledge of the mechanisms at work does not prohibit us from determining if the species requires protection under the Act, we acknowledge the concerns of the reviewers about how the impacts of climate change may impact the species in the future. We have modified the PDM to expand and extend the temperature monitoring currently conducted by ODFW, as suggested by several reviewers, to gain more knowledge on trends in water temperature in Borax Lake over time. We included a threshold in the PDM that would trigger the need to visit Borax Lake and assess the condition of the species and the habitat during high temperature periods; staff from BLM or ODFW would conduct this assessment. In addition, during the PDM period, the Service and our partners will evaluate the feasibility of establishing a refuge population of Borax Lake chub at a yet-to-be-determined location in the Alvord Basin as a long-term conservation measure for the species. Lastly, if climate change degrades habitat to the point that the likelihood of the species' persistence into the foreseeable future is low, we have the discretion to use the emergency listing authorities under section 4(b)(7) of the Act, such as we used in the May 28, 1980, emergency listing of the Borax Lake chub (45 FR 35821), and will exercise it as appropriate.

*Comment (2):* Two peer reviewers and one public commenter highlighted that the uncertainty of factors influencing spawn timing, recruitment success, and age structure impedes the accurate prediction of the effects of climate change on the species and its habitat.

*Response:* Early work on the Borax Lake chub focused heavily on determining life-history characteristics of the species and evaluating the factors identified by the commenters. We acknowledge that we do not have a complete understanding of these factors, but determine that the best available scientific and commercial information supports our conclusion that the species has sufficient resiliency to withstand the predicted temperature increases, and we do not need complete clarity regarding these factors before we can assess the potential impacts of climate change. As discussed above under Summary of Factors Affecting the Species, the Borax Lake chub has demonstrated flexibility and variability in its life history, and the ability to quickly rebound following mortality events, which will make the species resilient to climate change.

Borax Lake chub have a prolonged spawning period, approximately October through April, although spawning appears to be infrequent through the winter. Although it is possible that increased temperatures in the fall and spring due to climate change may alter spawn timing, given the long duration over which spawning currently occurs, increased temperatures during these periods are not expected to impact the species. We have no information to determine if spawning is more successful in the fall or spring.

*Comment (3):* One peer reviewer identified the potential risk of habitat loss due to a possible collapse of the lake shore in the event of an earthquake.

*Response:* While we acknowledge there is scientific evidence the lake shore has collapsed from past earthquake activity, these catastrophic events happen on geologic timescales that far exceed our predictive capabilities. In addition, despite evidence of past lake shore collapse, the Borax Lake chub has continued to persist. In acknowledgement of the species' rarity and potential vulnerability to catastrophic events, the Service and our partners will evaluate, during the PDM period, the feasibility of establishing a refuge population of Borax Lake chub at a yet-to-be-determined location in the Alvord Basin as a long-term conservation measure for the species.

*Comment (4):* One peer reviewers noted that the impacts of disease are not clear, and the species may be more susceptible to disease under increased thermal stress caused by climate change.

*Response:* We are not aware of any impacts to the persistence of the species due to disease. Following periods of increased water temperature, we have not observed changes to the biology, condition, or population abundance of the species that would lead us to conclude that stress from increased thermal load leaves the species more vulnerable to disease. During a cursory fish health examination, 9 of 114 (7.8 percent) fish examined were found to contain a parasitic nematode (Scoppettone *et al.* 1995, p. 39), but to our knowledge no other surveys for disease have been performed. As a part of an ongoing investigation of the role of disease and parasites in Oregon's nongame fish species, ODFW plans to study the pathogens in Borax Lake chub during the PDM period. Potential effects on the persistence of the species will be unknown until the prevalence and impacts of disease are manifest.

*Comment (5):* One peer reviewer and four public commenters identified isolation of Borax Lake as a potential threat to the long-term persistence of the species.

*Response:* Species with a limited range are inherently more at-risk from threats than species with broad distribution. However, natural rarity (*i.e.,* a species that only exists in one or a few locations, though it may be abundant there), in and of itself does not constitute a threat under the Act. Natural rarity may increase risk or vulnerability if threats are operative (*i.e.,* acting) on the species or its habitat now or in the foreseeable future, but rarity alone, in the absence of an operative threat, does not make the species warranted for protection under the Act. In some circumstances, isolation provides refuge from contagions, such as disease and invasive species.

In acknowledgement of the species' rarity and potential vulnerability to a catastrophic event, the Service and our partners will evaluate, during the PDM period, the feasibility of establishing a refuge population of Borax Lake chub at a yet-to-be-determined location in the Alvord Basin as a long-term conservation measure for the species.

*Comment (6):* One public commenter noted that Borax Lake chub population abundance was generally unstable, and identified the need for population stability prior to delisting.

*Response:* Population variability, with opportunistic demographic resilience, is relatively common for small-bodied desert fishes in the Cyprinid family of fishes (Winemiller 2005, pp. 878–879). The ability of the population to rapidly respond to changes in habitat condition is likely an adaptation that has made the species resilient in Borax Lake. We do not have concerns that interannual fluctuations in adult abundance pose a threat to the persistence of the species.

*Comment (7):* One public commenter expressed concern about predation on Borax Lake chub.

*Response:* Predation was not identified at the time of listing as a threat, and we do not view predation as a threat now or in the foreseeable future. Water temperature and chemistry at Borax Lake create unsuitable habitat conditions for most common aquatic predatory species that might be illegally introduced. Several native species that are likely predators of Borax Lake chub, such as garter snakes and common

grebes, are found in and around Borax Lake. The Borax Lake chub both evolved and has persisted in this habitat in the presence of these predatory species.

*Comment (8):* One public commenter noted that Borax Lake chub are categorized ''vulnerable'' by the International Union for the Conservation of Nature (IUCN), and this demonstrates the need to maintain protections for the species under the Act.

*Response:* Although the species is listed as vulnerable by the IUCN, this does not automatically equate to the need for Federal protections under the Act. Like many narrow endemic species, Borax Lake chub will remain vulnerable to threats. However, the threats that led to the Federal listing of the species have been ameliorated to the degree that we have determined protections under the Act are no longer warranted. Monitoring of the status of Borax Lake chub will be maintained following the delisting of the species through the PDM. Additional monitoring and other conservation efforts will be conducted through the CMP, although we do not rely on the CMP for this delisting determination.

*Comment (9):* Four public commenters expressed concern that the threat of geothermal development in proximity to Borax Lake has not been fully ameliorated, and this threat may increase if Federal protections are removed.

*Response:* As discussed in detail above under Summary of Factors Affecting the Species, *Factors A* and *D,* since the Borax Lake chub was federally listed under the Act, there have been several changes in land ownership and management that greatly reduce the likelihood of geothermal development in proximity to Borax Lake, including passage of the Steens Act of 2000, the BLM's designation of 600 ac (243-ha) around Borax Lake as an ACEC, and the acquisition by TNC of 320 ac (130 ha) that contain and border Borax Lake, which put all critical habitat for the species under public or conservation ownership. The combination of these regulatory and conservation-driven protections greatly reduce the potential for impacts to Borax Lake chub from any future geothermal development.

That said, we acknowledge some privately owned land surrounding Borax Lake is not subject to BLM's withdrawal, and proposals to develop geothermal energy resources in the Borax Lake vicinity occurred sporadically in the past. However, no past proposals have moved forward over a 4-decade period, and the likelihood of geothermal energy development now and in the foreseeable future is low. Furthermore, the precise effects of possible geothermal development on the species are uncertain and unpredictable, depending on the project scale and proximity to Borax Lake. If an assessment suggested a future geothermal project would likely cause significant risk to Borax Lake and the well-being of Borax Lake chub, we have the discretion to use the emergency listing authorities under section 4(b)(7) of the Act. The possibility of geothermal development in the vicinity of Borax Lake will continue to represent a potential threat to Borax Lake chub and its habitat, but we have determined the likelihood of this threat becoming operative in the foreseeable future is low.

*Comment (10):* Three public commenters noted that there is scientific uncertainty in the Service's decision to delist, and while the species has met recovery criteria, it may become an endangered species again in the future.

*Response:* There is almost always uncertainty associated with scientific data and predictions of such data into the future. Uncertainty is not a reason to keep a species listed under the Act if it no longer meets the definition of an endangered or a threatened species. We must delist species that we determine no longer meet the Act's definitions of a threatened species or an endangered species. The Borax Lake chub has clearly met recovery criteria and does not have operative threats now or in the foreseeable future. If unforeseen threats arise that are determined to endanger or threaten the long-term persistence of Borax Lake chub, we have the discretion to use the emergency listing authorities under section 4(b)(7) of the Act, such as we used in the May 28, 1980, emergency listing of Borax Lake chub (45 FR 35821).

*Comment (11):* Four public commenters expressed concerns about land use at and around Borax Lake, and potential impacts to the species. The commenters specifically mentioned development, over-fishing, grazing and livestock use, and vehicle access.

*Response:* Although signs of historical development, vehicle, and livestock use are present around Borax Lake, this use occurred prior to the construction of a perimeter fence by the BLM and TNC in 2011. Some unauthorized access has occurred since 2011, and the BLM and TNC quickly responded and modified the fence and gate to prohibit further unauthorized vehicle access. There is some use of Borax Lake by the public, but the threat of impacts to the habitat by vehicle use has been mitigated. We are not aware of any harvest of Borax Lake chub by the public and do not agree that over-fishing will threaten this species in the future. Similarly, concerns over development in the region are not likely to manifest themselves in the near future, as the Alvord basin is sparsely populated, and Borax Lake is roughly 3 mi (4.8 km) away from the nearest privately owned property; in addition, the likelihood of geothermal development is considered low. We conclude that land use is not likely to impact Borax Lake chub in the foreseeable future.

*Peer Review and Public Comments on Our Post-Delisting Monitoring Plan*

*Comment (12):* Two peer reviewers highlighted the value of water temperature monitoring at multiple locations in Borax Lake during the PDM period to provide information on the impacts of climate change on water temperatures. In addition, the reviewers identified the need for triggers in the PDM in response to high summer water temperatures that would signal the need to assess Borax Lake chub population abundance. One of the reviewers specified the need for a plan to monitor and respond to short-term events that require immediate management.

*Response:* Although it was not discussed in the draft PDM, ODFW has maintained water temperature monitoring equipment at multiple locations around Borax Lake since 2005. In 2011, ODFW installed additional monitoring equipment to track water depth, air pressure, and air temperature. These data are useful for observing trends in habitat suitability, and provide context for the population monitoring. We have added temperature monitoring as a component of the PDM.

Previous mortality events have occurred during periods when high water and air temperatures coincided. Although we have no plans to remotely monitor water temperatures, monitoring Borax Lake during times of high air temperature may be prudent. To accomplish this, we have added an additional monitoring trigger to the PDM: If maximum daily air temperature is projected to exceed 37.8 °C (100 °F) for 7 consecutive days, or maximum daily air temperature exceeds 45 °C (113 °F) on a single day, based on regional forecasting. The selection of these air temperature thresholds were based on high temperatures observed over the last decade.

In response to this trigger, managers will plan a site visit to assess the health of the chub population. This would include walking the shoreline to check water temperature, and visually detect

mortalities and locate live fish. If live fish are not observed, managers will plan to set minnow traps for brief periods (*e.g.,* 1 to 3 hours) in areas where water temperatures are the coolest. If no fish are captured in minnow traps, managers will conduct an assessment of the population under the protocols described in the PDM at the earliest possible time. This will be done once air and water temperatures cool, to lessen stress to the fish.

*Comment (13):* One peer reviewer recommended incorporating regular aquatic invasive species monitoring in the PDM.

*Response:* The draft PDM stated that monitoring should follow the protocols established by ODFW (Scheerer *et al.* 2012, p. 4), but it did not provide details regarding methodology. We included additional detail in the final PDM to address this issue and provide more clarity. Since 2005, managers have conducted annual shoreline surveys to take pictures of Borax Lake from established photo points, maintain data logging equipment, and assess the condition of the shoreline and extent of vegetative growth in the wetland. The survival of nonnative species in Borax Lake is unlikely given the high water temperatures and water chemistry. We developed an additional PDM trigger if a nonnative species likely to prey on Borax Lake chub, compete with Borax Lake chub, or otherwise negatively impact the habitat suitability of Borax Lake or the life history of Borax Lake chub is detected.

*Comment (14):* One peer reviewer suggested population monitoring of Borax Lake chub every 2 years, rather than 3 as written in the draft PDM, based on the current demographic information.

*Response:* Regular population monitoring is important during the PDM period, but we have concluded that sampling every 3 years is prudent. The age structure and life history of Borax Lake chub is poorly understood, and some biologists have speculated that the species might be primarily an annual species (Scheerer *et al.* 2015, p. 9). Previous mortality events appear to occur during periods when high water and air temperatures coincided, and thus we included a PDM trigger to assess the population following a period of thermal stress, as described under our response to *Comment (12).* We have concluded that monitoring every 3 years, with additional sampling following of periods of high air temperature, will provide enough information to assess the health of the population during the PDM period.

**Determination of the Status of the Borax Lake Chub**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as a species that is ''in danger of extinction throughout all or a significant portion of its range'' and a ''threatened species'' as a species ''that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

*Status Throughout All of Its Range*

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we found that significant threats identified at the time of listing (47 FR 43957; October 5, 1982) have been eliminated or reduced. We recognize that under Factor A (the present or threatened destruction, modification, or curtailment of its habitat or range), the possibility of geothermal development in the vicinity of Borax Lake will continue to represent a potential threat to the Borax Lake chub and its habitat, but we have determined the likelihood of this threat becoming operative in the foreseeable future is low. We did not identify any other threats from development on private lands in the vicinity of Borax Lake. We have identified climate change as a new potential threat to the Borax Lake chub, but the magnitude and frequency of this potential threat are generally unknown at this time. The largest impact identified by the potential threat of climate change is related to cumulative impacts of increased air temperature and variability in geothermal water temperature, yet the species' capacity to persist through changes in temperatures has been well demonstrated. In the fall of 2017, the estimated population abundance for Borax Lake chub was twice as high as any previous estimate while water temperature was higher than the suggested thermal tolerance for a longer duration than any period in the 2005–2016 record. We conclude that there are no threats to the Borax Lake chub under Factor B (overutilization for commercial, recreational, scientific, or educational purposes), Factor C (disease or predation), or Factor E (other natural or manmade factors affecting its continued existence). We conclude that under Factor D (the inadequacy of existing regulatory mechanisms), the existing regulatory mechanisms provide significant protections to the Borax Lake chub and its habitat, especially on Federal lands, but they do not address potential impacts of geothermal development on private lands. However, the BLM designated 520 ac (210 ha) of public land surrounding Borax Lake as an ACEC to protect Borax Lake chub and its habitat, and regulatory mechanisms exist that would ensure State and Federal natural resource agencies will be made aware of and provide comment on any private development proposals moving forward for permitting. Therefore, we have determined that the likelihood of the threat of geothermal development in the vicinity of Borax Lake becoming operative in the foreseeable future is low; therefore, no regulatory mechanisms are needed to address this potential threat. All of these threats apply similarly throughout the range of the species in Borax Lake.

Thus, after assessing the best available information, we conclude that the Borax Lake chub is not currently in danger of extinction, and is not likely to become so within the foreseeable future, throughout all of its range.

*Determination of Status Throughout a Significant Portion of Its Range*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range.

Having determined that the Borax Lake chub is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the species' range to determine if there are any portions that warrant further consideration. To do the ''screening'' analysis, we ask whether there are portions of the species' range for which there is

substantial information indicating that: (1) The portion may be significant; and (2) the species may be, in that portion, either in danger of extinction or likely to become so in the foreseeable future. For a particular portion, if we cannot answer both questions in the affirmative, then that portion does not warrant further consideration and the species does not warrant listing because of its status in that portion of its range. We emphasize that answering both of these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required.

If we answer these questions in the affirmative, we then conduct a more thorough analysis to determine whether the portion does indeed meet both of the significant portion of its range prongs: (1) The portion is significant; and (2) the species is, in that portion, either in danger of extinction or likely to become so in the foreseeable future. Confirmation that a portion does indeed meet one of these prongs does not create a presumption, prejudgment, or other determination as to whether the species is an endangered species or threatened species. Rather, we must then undertake a more detailed analysis of the other prong to make that determination. Only if the portion does indeed meet both significant portion of its range prongs would the species warrant listing because of its status in a significant portion of its range.

At both stages in this process—the stage of screening potential portions to identify any portions that warrant further consideration and the stage of undertaking the more detailed analysis of any portions that do warrant further consideration—it might be more efficient for us to address the ''significance'' question or the ''status'' question first. Our selection of which question to address first for a particular portion depends on the biology of the species, its range, and the threats it faces. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the second question for that portion of the species' range.

We evaluated the range of the Borax Lake chub to determine if any area may be a significant portion of the range. The Borax Lake chub is a narrow endemic that functions as a single, contiguous population and occurs within a very small area. The species occurs in Borax Lake in the Alvord Basin and its historical known natural range is limited to Borax Lake and associated outflows and wetlands. Based on the small range of the Borax Lake chub, approximately 10.2-ac (4.1-ha), we determined that there are no separate areas of the range that are likely to be of greater biological or conservation importance than any other areas due to natural biological reasons alone. Every threat to the species in any portion of its range is a threat to the species throughout all of its range, and so the species has the same status under the Act throughout its narrow range. Therefore, we conclude, based on this screening analysis, that the species is not in danger of extinction or likely to become so in the foreseeable future in any significant portion of its range. Our conclusion—that we do not undertake additional analysis if we determine that the species has the same status under the Act throughout its narrow range—is consistent with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* No. 16-cv-01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018); *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017); and *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020).

*Determination of Status*

Our review of the best available scientific and commercial information indicates that the Borax Lake chub does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we are removing the Borax Lake chub from the List of Endangered and Threatened Wildlife.

**Effects of This Rule**

This rule revises 50 CFR 17.11(h) to remove the Borax Lake chub from the Federal List of Endangered and Threatened Wildlife. On the effective date of this rule (see **DATES**, above), the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, no longer apply to this species, and Federal agencies are no longer required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the Borax Lake chub. This final rule also revises 50 CFR 17.95(e) by removing the designated critical habitat for Borax Lake chub throughout its range. Current State laws protecting the Borax Lake chub will likely remain enforceable and continue to provide protection for this species.

**Post-Delisting Monitoring**

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a system to monitor effectively, for not less than 5 years, all species that have been recovered and delisted. The purpose of this post-delisting monitoring is to verify that a species remains secure from risk of extinction after it has been removed from the protections of the Act. The monitoring is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of post-delisting monitoring programs, but we remain responsible for compliance with section 4(g) of the Act and, therefore, must remain actively engaged in all phases of post-delisting monitoring. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

*Post-Delisting Monitoring Plan Overview*

We prepared a PDM plan for the Borax Lake chub, building on and continuing the research that has taken place in the time since the species was listed. The PDM plan discusses the current status of the taxon and describes the methods to be used for monitoring after the taxon is removed from the Federal List of Endangered and Threatened Wildlife. Monitoring Borax Lake chub under the PDM will follow the same sampling protocol used by the ODFW prior to delisting. Monitoring will consist of several components: Borax Lake chub abundance, invasions of nonnative species, potential adverse impacts during periods of high air temperature, potential adverse changes to Borax Lake chub habitat, and monitoring DOGAMI for drilling applications. The PDM will consist of annual monitoring of all components, except surveys to estimate population abundance, which will be conducted once every 3 years over a 10-year period (four population surveys total), which will begin following the effective date of this rule (see **DATES**, above). Given the Borax Lake chub is a short-lived fish (few survive beyond 1 year; Scoppettone *et al.* 1995, p. 36), periodic monitoring over this time period will allow us to address any possible negative effects to

the Borax Lake chub. Additionally, the chub experienced wide fluctuation in its population year-to-year. Limited point estimates for a widely fluctuating population can lead to difficulty assessing long-term trends. Therefore, although the minimum PDM period required by the Act is 5 years, as described above, we chose to extend the population abundance monitoring cycle to once every 3 years and the total monitoring period to 10 years to ensure we can accurately measure changes in trends.

The PDM plan identifies measurable management thresholds and responses for detecting and reacting to occurrence of nonnative species or significant changes in the Borax Lake chub's habitat, distribution, abundance, and persistence. If declines are detected equaling or exceeding these thresholds, the Service, in combination with other PDM participants, will investigate causes of these declines, including considerations of habitat changes, substantial human persecution, stochastic events, or any other significant evidence. The result of the investigation will be to determine if the Borax Lake chub warrants expanded monitoring, additional research, additional habitat protection, or relisting as an endangered or a threatened species under the Act. If such monitoring data or an otherwise updated assessment of threats (such as specific information on proposed geothermal development projects) indicate that relisting the Borax Lake chub is warranted, emergency procedures to relist the species may be followed, if necessary, in accordance with section 4(b)(7) of the Act.

**Required Determinations**

*National Environmental Policy Act*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We do not believe that any Tribes will be affected by this rule. However, we contacted the Burns Paiute Tribe to coordinate with them regarding the proposed rule to delist the Borax Lake chub. We provided the Tribe with a copy of the proposed rule and draft PDM, but we did not receive any comments from them.

**References Cited**

A complete list of all references cited in this final rule is available at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2017–0035 or upon request from the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Authors**

The primary authors of this final rule are staff members of the Service's Oregon Fish and Wildlife Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

**§ 17.11 [Amended]**

■ 2. Amend § 17.11(h) by removing the entry for ''Chub, Borax Lake'' under FISHES from the List of Endangered and Threatened Wildlife.

**§ 17.95 [Amended]**

■ 3. Amend § 17.95(e) by removing the entry for ''Borax Lake Chub (*Gila boraxobius*).''

**Aurelia Skipwith,**

*Director, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 200515–0141]**

**RIN 0648–BI45**

## Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Vessel Movement, Monitoring, and Declaration Management for the Pacific Coast Groundfish Fishery

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises reporting and monitoring provisions for vessels participating in the Pacific Coast groundfish fishery. This would: Increase the position transmission rate for certain vessels using NMFS type-approved vessel monitoring system units; allow midwater trawl vessels participating in the Pacific whiting fishery to change their landing declarations while at sea; exempt groundfish trawl vessels from observer coverage while testing authorized fishing gear; and allow shorebased Individual Fishing Quota fixed gear vessels to deploy pot gear in one management area while retrieving gear from another management area on a single trip. This action will increase monitoring efficiency and effectiveness, improve enforcement of restricted areas, and increase operational flexibility for groundfish fishery participants.

**DATES:** Effective July 13, 2020, except for the amendments to § 660.14, which are effective September 9, 2020.

**ADDRESSES:** Electronic copies of supporting documents referenced in this final rule, including the Categorical Exclusions (CE) and final regulatory flexibility analysis (FRFA), are available from *www.regulations.gov* or from the NMFS West Coast Region Groundfish Fisheries website at *https://www.fisheries.noaa.gov/species/west-coast-groundfish.*

**FOR FURTHER INFORMATION CONTACT:** Shannon Penna, Fishery Management Specialist, 562–980–4238, or *shannon.penna@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

Between September 2014 and April 2016, the Pacific Fishery Management Council (Council) developed and considered management measures to address a range of vessel and gear movement issues and aggregated these issues under a single vessel movement monitoring agenda item. The Council deemed the proposed regulations consistent with and necessary to implement this action in a July 17, 2019, letter from Council Executive Director, Chuck Tracy, to Regional Administrator Barry Thom. Additional background information on each of the measures included in this final rule are included in the proposed rule, published on October 10, 2019 (84 FR 54579), and is not repeated here.

## Summary of the Regulatory Changes

This section discusses regulatory revisions that are expected to increase NMFS' ability to enforce fishing activity in and around restricted areas, and result in cost savings, increased profitability, and flexibility for the groundfish fishery. This final rule:

- Increases the position transmission rate requirements for certain vessels using NOAA NMFS type-approved vessel monitoring system (VMS) units;
- Amends the definition for continuous transit;
- Allows midwater trawl vessels participating in the Pacific whiting fishery to change their landing declarations while at sea;
- Exempts groundfish trawl vessels from observer coverage while testing authorized fishing gear; and
- Allows shorebased Individual Fishing Quota (IFQ) fixed gear vessels to retrieve pot gear in one management area and deploy that gear in another management area on a single trip.

### *A. Increased Position Transmission Rate for Groundfish VMS*

Vessels participating in the limited entry groundfish fishery (limited entry ''A'' endorsed permit), any vessels using non-groundfish trawl gear (ridgeback prawn, California halibut, and sea cucumber trawl) in the Exclusive Economic Zone (EEZ), and any vessels that use open access gear to take and retain or possess groundfish in the EEZ or land groundfish taken in the EEZ (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap), are required to install a NMFS Office of Law Enforcement (OLE) type-approved mobile transceiver unit and to arrange for a NMFS OLE type-approved communications service provider to receive and relay transmissions to NMFS OLE prior to fishing. These units automatically record a vessel's position (*i.e.,* the vessel's geographic location in latitude and longitude coordinates), and transmit those coordinates to a communications service provider. The current regulations require that VMS units transmit a vessel's position once every hour, 24 hours a day throughout the fishing year. Less frequent position reporting, at least once every 4 hours, may be authorized when a vessel has temporarily paused participation in the fishery and remains in port for an extended period of time. The VMS units record vessel positions at a random time during each hour so that vessel operators are unaware of when the vessel position is being recorded.

The Council recommended increasing the vessel position frequency to increase NMFS' ability to enforce fishing activity around restricted areas. This action increases the position transmission rate to every 15 minutes per hour for groundfish vessels required to use NMFS type-approved VMS units. This increase in frequency will produce more course, location, and speed data to improve NMFS' ability to identify whether vessels are continuously transiting in restricted areas or not.

Increasing the VMS position transmission rate from once every hour to every 15 minutes will increase vessel operating costs. While vessels can choose from a variety of VMS service providers, the average monthly operating costs for transmissions every 15 minutes is $105 per month ($69 to $150 range) compared to an average of $50 per month ($37 to $65 range) for a single transmission per hour.

The final rule also adds two exemptions that will reduce redundant reporting and may provide cost savings to some portions of the fleet. For the first exemption, vessels that have installed and are using electronic monitoring (EM) systems for the duration of the fishing year can maintain the current position transmission rate of one transmission per hour. EM systems include a Global Positioning System (GPS) that records the vessel position every 10 seconds. Because EM systems record vessel positions so frequently, it is not necessary to also increase the VMS position transmission rates. The GPS data are recorded to a hard drive, which the captain removes every 10 days and mails to the Pacific States Marine Fisheries Commission. For the second exemption, limited entry trawl vessels fishing with midwater trawl gear can maintain the current position transmission rate of one transmission per hour. Limited entry vessels are only allowed to use midwater trawl gear to target whiting or non-whiting groundfish species during the primary whiting season from May 15 to December 31 each year. These vessels are also limited to using midwater trawl gear seaward of the boundary line approximating the 150 fm (274 m) depth contour (defined at 50 CFR 660.73) south of 40°10′ North (N) latitude (lat.), but can use midwater trawl gear anywhere within the EEZ north of 40°10′ N lat. Because there are only very broad seasonal and area restrictions associated with midwater trawl gear, and because these vessels are not generally subject to smaller geographic areas restrictions such as essential fish habitat conservation areas (EFHCAs), the increased position transmission rate is not necessary for restricted area enforcement for vessels using midwater trawl gear. Limited entry vessel operators are allowed to change their transmission rates or VMS declaration reports on a trip-by-trip basis when necessary.

### *B. Continuous Transit Definition*

This rule revises the current definition of ''continuous transiting or transit through'' to encompass a broader array of vessel activity that is akin to loitering within a restricted area, whether that be by means of a source of power or by drifting with the prevailing water current or weather conditions. Under this revised definition, visual, electronic, or other evidence of vessel activity should provide information on vessel speed and course sufficient to indicate direct and expeditious transiting of a restricted area.

### *C. Exemption From Observer Coverage While Testing Gear*

This final rule establishes a definition for gear testing. The definition states that gear testing is the deployment of lawful gear without retaining fish, for purposes, including, but not limited to: Deployment of nets using open codends; calibration of engines and transmission under load (*i.e.,* towing a net with an open codend); deployment of wire and/or doors; testing new electronic equipment associated with deploying fishing gear; and testing and calibration of newly installed propulsion systems (*i.e.,* engine, transmission, shaft, propeller, etc.).

This final rule also exempts groundfish vessels participating in the

shorebased IFQ, Mothership (MS), and Catcher-Processor (C/P) sectors from the requirement to carry an observer while testing gear. Vessels participating in these sectors are subject to a 100 percent observer requirement while conducting fishing activity. However, a vessel would not need an observer while testing gear because gear testing activity would specifically prohibit retaining fish. In addition to being prohibited from retaining fish while gear testing, vessels would be prohibited from testing experimental gear, testing with a closed codend, terminal gear, or with open pots, and from testing gear in groundfish conservation areas or EFHCAs.

This final rule adjusts the declaration requirements for testing gear. To be exempted from observer coverage while testing gear, vessels need to communicate with both West Coast Groundfish Observer Program (WCGOP) and NMFS OLE. Vessels are required to notify WCGOP by phone or email, of the gear testing activity at least 48 hours prior to departing on a trip to test gear or equipment. This action also adds a VMS declaration code for ''Gear testing.'' When a vessel operator calls the West Coast Groundfish Declaration Line to declare ''Gear testing,'' the VMS technician will review the information submitted and determine if the vessel is eligible for this declaration. This measure will result in observer coverage cost savings on trips to test fishing gear or equipment.

*D. Declaration Changes at Sea for Whiting Fishery*

This final rule revises restrictions on midwater trawl catcher vessels participating in the Pacific whiting fishery to allow them to change declarations while at sea by calling the West Coast Groundfish Declaration Line. After a vessel offloads onto a mothership, it can immediately change its declaration from one of the ''Pacific whiting mothership sector'' declarations to one of the ''Pacific whiting shorebased IFQ'' declarations to make a tow and offload on shore, or vice versa. In the past, midwater catcher trawl vessels participating in the Pacific whiting fishery were restricted to landing either at a mothership or shoreside processor. After Pacific whiting catcher vessels have made their delivery obligation to a mothership, they were not allowed to make a tow for a delivery to a shoreside processor without returning to port first.

Allowing vessels to change their declarations at sea provides vessels the opportunity to optimize available resources before returning to port. As a result, vessels will spend less time at sea, and in transit to and from fishing ports, which will ultimately reduce the cost of fuel and crew.

*E. Movement of IFQ Fishpot Gear Across Management Lines*

The final rule allows shorebased IFQ fixed gear vessels retrieving pots from one management area to retain their catch on board and move to a second management area to deploy pots. These pots may be either baited or not baited. The vessel may then return to port to deliver their fish, then return to retrieve their pots from the second management area. Although the adjustment increases operational flexibility in deploying pots, vessels are still only permitted to retain and land fish from a single management area. This will ensure the integrity of data to support stock assessments and catch monitoring for a single management area. Overall, fishing vessels will spend less time at sea, which should reduce the cost of fishing.

*F. Comments and Responses*

NMFS received 13 comment letters during the comment period for the proposed rule. Commenters included Oceana, an environmental organization, the California Department of Fish and Wildlife, seven commercial fishermen, three fishing associations, and a private citizen. Only comments relevant to measures considered in the proposed rule are summarized and addressed below. Comments related to other fishery actions, general fishery management, or unrelated to fisheries are not addressed here. All public comment letters can be viewed along with the proposed rule and supporting documents for this action at *www.regulations.gov*.

*Comment 1:* Seven commercial fishermen and three fishing associations opposed increasing the VMS transmission rates from once-per-hour to four times per-hour because increasing the transmission rate will increase VMS operating costs.

*Response:* The Council recommended increasing the VMS transmission rate frequency to improve NMFS' capacity to enforce fishing activity around restricted areas. The analytic document and the preamble to the proposed rule discuss that the once-per-hour transmission rate is insufficient to prove that a vessel was not operating in continuous transit through a restricted area. The increased transmission frequency provides more course, location, and speed data to improve NMFS' ability to identify whether vessels are continuously transiting restricted areas or not.

In addition, NMFS recently revised the network of groundfish essential fish habitat (EFH) conservation areas, areas closed to either bottom trawling or bottom contact fishing gear, in Amendment 28 to the Pacific Coast Groundfish FMP (84 FR 63966; November 19, 2019). In April 2018, while the Council was developing Amendment 28, its Enforcement Committee evaluated the enforceability of proposed new and revised EFH conservation areas. The evaluation concluded that the once-per-hour transmission rate did not provide sufficient data to enforce 9 of the 46 areas recommended by the Council, noted that a four times-per-hour transmission rate greatly improved monitoring incursions, and recommended that NMFS expedite this action. NMFS estimates, based on the Enforcement Committee's prior evaluation, that three EFH conservation areas may continue to present enforcement challenges under the four times-per-hour transmission rate because of their narrow shape. Ultimately, the Council and NMFS determined that the conservation benefits from increasing our ability to enforce restricted areas justified the potential additional operating cost for fishery participants.

The Council did recommend an option to reduce the operating costs of increasing the VMS transmission rate. As an alternative, commercial fishermen would be allowed to use a non type-approved VMS unit. These units would not be NMFS type-approved, but meet NMFS reporting standards (*e.g.,* type and frequency of data collected, form of transmittal, ruggedized, and an encrypted format) with a reduced operating cost. NMFS OLE and the West Coast Region identified a number of implementation challenges in creating a non type-approved VMS program for the only the West Coast Region, including lack of funding and staffing resources. Ultimately, the Council withdrew its recommendation to implement a non type-approved VMS unit, but maintained its recommendation to increase the ping rate.

NMFS remains committed to exploring cost-effective solutions to meet regional and national monitoring needs. For example, on February 24, 2020, NMFS published a proposed rule to amend the national type-approval requirements (85 FR 4257). In an effort to improve location reporting and get more data at a lower cost to the fishermen, this proposed rule will allow for fishermen to use cellular-based transceiver types, as opposed to satellite-only models.

As data is much less expensive to send by cellular means than by satellite, this action could provide a more cost-effective option to require and receive beneficial fisheries data. The Council would need to evaluate the use of cellular-based systems for monitoring groundfish fisheries to fully understand coverage limitations and determine whether this tool is appropriate for the fishery.

*Comment 2:* California Department of Fish and Wildlife (CDFW) requested clarification about the vessels subject to the groundfish VMS requirement. The CDFW commented that the description of the measures in the proposed rule implies that additional vessels or fleets, including salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap, that were not previously subject to the requirement will now need to obtain and operate a VMS unit on trips. Two commercial fishermen questioned why the recreational fleet is not required to have VMS.

*Response:* This rule only modifies the frequency of VMS transmission rates, and does not modify the vessels or fleets that are subject to the VMS requirement. Currently, any vessel with a limited entry ''A'' endorsed permit, any vessel that uses non-groundfish trawl gear to fish in the EEZ, and any vessel that uses open access gear to take and retain, or possess groundfish, or land groundfish taken in the EEZ, is required to maintain an operational VMS unit. If vessels using open access gear do not take and retain, or possess groundfish, or land groundfish taken in the EEZ, then these vessels are not subject to the VMS requirement. All vessels and fleets that are currently subject to the VMS requirement are subject to the increased transmission rate. The Council did not consider including a VMS requirement for the recreational fishing fleet (including charter and private sectors) in this action.

*Comment 3:* Two commercial fishermen commented that VMS position transmission rates should be unpredictable so that vessels cannot deliberately evade location monitoring. They also commented that NMFS should work with service providers to develop store and forward capability for VMS software to reduce transmission costs.

*Response:* Vessels are required to use NMFS type-approved VMS units that have defined standards for basic features, described at 50 CFR 600.1500. These VMS units document a vessel's position a predetermined number of times per hour. For example, a four-times-per-hour requirement would result in positions documented every 15 minutes, and a six-times-per-hour requirement would result in positions documented every 10 minutes. For enforcement effectiveness, vessel operators and NMFS enforcement are unaware of exactly when the VMS unit is transmitting these position signals to the service providers. For example, with a four-times-per-hour requirement, the unit may transmit a position signal during the second minute of the first 15-minute interval of the hour, and during the tenth minute of the second 15-minute interval of the hour. Because operators are unaware of when the VMS units are recording and transmitting position information, it is unlikely that vessel operators will be able to alter their vessel trajectory to conceal prohibited fishing activities.

The National VMS program does not currently permit satellite store and forward for type-approved VMS units. NMFS OLE considered allowing the use of limited store and forward position, but determined that because the magnitude of monthly operating costs is based on the amount of data being transmitted, rather than the frequency of transmission, the potential for cost savings with store and forward for satellite VMS units is insignificant to nonexistent.

*Comment 4:* Oceana and one unaffiliated private citizen supported the changes to the VMS transmission frequency. They commented that the increased transmission frequency is necessary to adequately monitor and enforce conservation areas in federally managed groundfish fisheries including groundfish conservation areas, rockfish conservation areas and EFH conservation areas.

*Response:* NMFS agrees. The final rule implements the Council's recommendation to increase the VMS transmission frequency to four-per-hour, which will provide additional information on vessel location to more accurately monitor groundfish fisheries and conservation areas.

*Comment 5:* Oceana commented that NOAA should expand its use of enhanced electronic monitoring systems, including gear sensors that can indicate when fishing activity is occurring and GPS units that can make detailed and accurate records of vessel positions.

*Response:* NMFS encourages all fishery stakeholders, including the Fishery Management Councils, to consider implementing electronic technology (ET) options where appropriate to meet science, management, and data needs. NMFS released a national Policy on Electronic Technologies and Fishery-dependent Data Collection in 2013 to provide guidance on the implementation of ET solutions and in fisheries. An updated policy was released in May 2019. In 2015, NMFS implemented regional ET implementation plans informed by a series of national-level planning documents. These plans were created to help move beyond pilot projects by identifying, evaluating, and prioritizing implementation of promising electronic technologies in specific fisheries around the country. We are in the process of updating these plans, highlighting the lessons-learned from the last 4 years, and looking forward to 2024. The Pacific Council is scheduled to review a draft of the new ET plan at their June 2020 meeting. On the west coast, NMFS currently has an electronic monitoring program in place for two sectors of the groundfish fishery. Catcher vessels in the Pacific whiting fishery (shorebased Individual Fishing Quota (IFQ) and at-sea Mothership Catcher Vessels) are exempt from increasing their VMS transmissions to four times-per-hour while using EM. NMFS is also working to increase EM opportunities for the limited entry groundfish trawl fishery (including midwater trawl gear and bottom trawl gear). These EM systems include gear sensors and GPS units that can indicate when and where fishing activity is occurring.

*Comment 6:* One commercial fisherman commented that, in a personal communication with one of the VMS service providers, the service provider stated that the most frequent transmission rate for VMS systems nationwide is twice-per-hour. The commenter requested that NMFS consider implementing a VMS position transmission frequency of two times-per-hour to be consistent with other fisheries in the U.S., and to help reduce VMS costs.

*Response:* NMFS agrees that several fisheries in other regions require fewer than four position transmissions per hour but notes that the required position transmission rate for each fishery depends on the location monitoring needs of the fishery. For this reason, there is no standard, nationwide position transmission rate. As described in the response to Comment 1, the Council and NMFS determined that a more frequent position transmission rate is necessary to monitor area incursions for the Pacific Coast groundfish fishery. In its deliberations for this action, the Council did consider implementing position transmission frequencies of two- and three-times per hour. However, these alternatives were rejected because

these position transmission frequencies did not provide frequent enough information for enforcement to determine a vessel's course or fishing activity in small restricted areas.

*Comment 7:* The Ventura County Commercial Fishermen's Association, the San Diego Fishermen's Working Group, and a private citizen commented that the current once per hour ping rate has proved to be an effective deterrent to illegal fishing in EFH Conservation Areas, Rockfish Conservation Areas, Marine Protected Areas and the multitude of other Reserves and Conservation Areas up and down the Pacific West Coast.

*Response:* VMS is a practical tool for monitoring vessel activity in relation to restricted areas. As described in the response to *Comment 1,* the new and revised closed areas implemented in Amendment 28 to the Pacific Coast Groundfish Fishery Management Plan require an increased VMS transmission rate to effectively monitor fishing activity. A VMS transmission rate of four-times-an-hour will improve monitoring to deter possible illegal fishing.

*Comment 8:* One commercial fisherman commented that NMFS should get location data from logbooks.

*Response:* Although logbooks require vessels to report coordinates for fishing activity, NMFS does not have the opportunity to review these coordinates until after the vessels have returned to port. VMS provides accurate information on the location of the vessel and can be used to identify where fishing activity takes place with a reasonable degree of accuracy while a trip is underway.

The VMS requirement also extends to a broader range of participants in the groundfish fishery than the logbook requirement. Currently, the groundfish trawl fleet is the only groundfish fleet required to submit a Federal logbook. Although trawl vessels are required to submit coordinates for each haul, the information provided in the logbooks only describes tow information, and does not include information about vessel trajectory. The VMS requirement for the groundfish fishery applies to vessels with a limited entry ''A'' endorsed permit, any vessel that uses non-groundfish trawl gear to fish in the EEZ, and any vessel that uses open access gear to take and retain, or possess groundfish, or land groundfish taken in the EEZ. For these reasons, VMS is currently a more comprehensive tool to monitor vessel movement than logbooks.

*Comment 9:* The South Bay Cable/Fisheries Liaison Committee and Ventura County Commercial Fishermen's Association believes there are going to be major structural changes to southern California Rockfish Conservation Areas (RCA) and possibly even the elimination of the Cowcod Conservation Areas (CCA) in this next groundfish specifications cycle. The groups requested that the Council reconsider its support for and its recommendation to increase the ping rate for groundfish vessels, and others.

*Response:* The Council is not planning to consider major adjustments to the non-trawl RCA or CCA in the 2021–2022 specifications action. The Council has, however, indicated it intends to consider changes to these management areas in a future action. The Council can evaluate monitoring needs for the non-trawl portion of the groundfish fleet in conjunction with that action.

*Comment 10:* Three commercial fishermen commented that due to restrictions on turning off the VMS unit when not fishing, the increase to annual VMS operating costs will be too expensive. The commenters asked NMFS to consider allowing a reduction in transmissions when a vessel is in port.

*Response:* NMFS acknowledges that there are situations in which fishermen may need to be exempted from operating their VMS units. The existing regulations already include an in port exemption that allows vessels to reduce their signals to at least once every four hours while a vessel remains in port for an extended period of time. In addition, vessels operating with EM and vessels fishing in the limited entry midwater trawl fishery are allowed to maintain at one signal per hour. Additional cost saving exemptions, such as the exemption recommended in the comment, would need to be considered through the Council process.

**Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order (E.O.) 12866.

This final rule is considered an Executive Order 13771 deregulatory action. This final rule removes restrictions on catcher vessels to allow them to change their declarations while at sea. After a catcher vessel offloads onto a mothership, it can immediately change its declaration from the Pacific whiting mothership sector to Pacific whiting shorebased IFQ sector to make a tow and offload on shore, or vice versa. Removing this restriction creates additional flexibility for vessel operation and may increase revenues. This final rule eliminates the requirement for vessels participating in the shorebased IFQ Program and Mothership or Catcher-Processor cooperatives to carry an observer while testing fishing gear. Removing this restriction reduces operating costs while testing gear. Finally, the revised regulations allow pot gear (fixed gear) vessels retrieving gear from one management area to retain their catch on board and move to a second management area to deploy pots. The vessel may then return to port to deliver their fish, then return to retrieve their pots from the second management area. This change increases operational flexibility, while ensuring the integrity of data to support stock assessments and catch monitoring for a single management area.

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the Pacific Coast Groundfish FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction.

This final rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with section 4 of NOAA's Policies and Procedures for Compliance with the National Environmental Policy Act (NEPA) and Related Authorities (Companion Manual for NAO 216–6A). Per section 4B of the Manual, a categorical exclusion (CE) evaluation document has been prepared that evaluates the applicability of the CE.

NMFS prepared a final regulatory flexibility analysis (FRFA) under section 604 of the Regulatory Flexibility Act (RFA), which incorporates the initial regulatory flexibility analysis (IRFA) prepared during the proposed rule stage. A copy of the FRFA and CE memo are available from NMFS (see **ADDRESSES**), and, as per the requirements of 5 U.S.C. 604(a), the text of the FRFA follows.

**Final Regulatory Flexibility Act Analysis**

For any rule subject to notice and comment rulemaking, the RFA requires Federal agencies to prepare, and make available for public comment, both an initial and final regulatory flexibility analysis, unless the agency can certify that the proposed and/or final rule would not have a significant economic impact on a substantial number of small entities. These analyses describe impact on small businesses, non-profit enterprises, local governments, and other small entities as defined by the RFA (5 U.S.C. 603). This analysis is to inform the agency and the public of the expected economic effects of the alternatives, and aid the agency in considering any significant regulatory alternatives that would accomplish the applicable objectives and minimized the economic impact on affected small entities. The RFA does not require that the alternative with the least cost or with the least adverse effect on small entities be chosen as the preferred alternative.

The need for and objective of this final rule is described above in the Background section of this preamble and not repeated here.

*A Statement of the Significant Issues Raised by the Public Comments in Response to the IRFA*

No public comments were received in response to the IRFA. We received a comment on the economic impact and a response is provided earlier in the preamble under comment 1.

*The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy in Response to the Final Rule*

No agency response was required, as no comments were received.

*A Description and, Where Feasible, Estimate of the Number of Small Entities to Which the Final Rule Will Apply*

The RFA (5 U.S.C. 601 et *seq.*) requires government agencies to assess the effects that regulatory alternatives would have on small entities, defined as any business/organization independently owned and operated, not dominant in its field of operation (including its affiliates).

For RFA purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

For the purposes of our Regulatory Flexibility Act (RFA) analysis, the final action is considered to regulate ownership entities that are potentially affected by the action. The U.S. Small Business Association (SBA) established criteria for business in the fishery sector to qualify as small entities. Limited entry groundfish vessels directly regulated by this action are required to renew a permit annually, and the application asks for entity size including affiliation. Of those who responded as being large entities, 15 permits owned by 9 large entities were attached to vessels that participated in bottom trawl or fixed gear groundfish fisheries in 2018 and are the most likely to be impacted by the rule.

Of the 856 vessels impacted by this rule, none had annual ex-vessel revenue on the West Coast (participation in other fisheries is not known) greater than the NMFS $11 million size standard. The top three revenue vessels, all in the IFQ fishery, had an average revenue of $1.9 million in 2018 in all West Coast fisheries. In contrast, the bottom 10 earning vessels had revenues in all West Coast fisheries of less than $1,000. While the analysis relies on 2018 data, there have not been significant changes in the number of entities or relative small business size status of the fleet from 2018 to 2019.

*Reporting and Record-Keeping Requirements*

This action changes two information collection requirements.

*NMFS Type-Approved VMS Transmission Rate Increase*

This action adjusts the position transmissions rate for certain vessels using NMFS type-approved vessel monitoring system units, including limited entry groundfish vessels, vessels using non-groundfish trawl gear in the EEZ (ridgeback prawn, California halibut, and sea cucumber trawl), and any vessels that use open access gear targeting groundfish take and retain, possess groundfish or land groundfish taken in the EEZ in the EEZ (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap). Vessel owners are required to increase their position transmission rate from once-per- hour to four times- per hour. Vessels that are operating with electronic monitoring or in port for an extended period of time will be exempt from this increase and allowed to continue with a rate of four-times-per-hour.

*Addition of a Declaration for Testing Fishing Gear*

The final action adds a declaration for gear testing so vessels will be exempt from observer coverage while testing gear and restricted from harvesting fish, and allow Groundfish midwater trawl vessels participating in the Pacific whiting fishery (shorebased IFQ Sector and the MS Sector), to make a new declaration from sea and allowed to make a tow for a delivery to a shoreside processor without returning to port first. The numbers of declaration reports the vessel operator is required to submit to NMFS would not change under this request. Therefore, no small entity would be subject to additional reporting requirements.

*Federal Rules Which May Duplicate, Overlap, or Conflict With This Proposed Rule*

There are no relevant Federal rules that may duplicate, overlap, or conflict with this action.

*Description of Significant Alternatives to This Final Rule That Minimize Economic Impact on Small Entities*

NMFS considered sub alternatives to the proposed rule that may have minimized significant economic impact, but not meet stated objectives of applicable statutes. The Council briefly considered increasing the position transmission signal to every 30 minutes or every 20 minutes, but rejected those alternatives from further analysis because those position transmission signals may not be frequent enough to provide information to enforce small restricted areas, or provide enough information to calculate a vessel's course for enforcement of continuous transit requirements.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rules, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was

prepared. Copies of this final rule are available from the West Coast Regional Office (see **ADDRESSES**), and the guide will be included in a notice sent to all members of the groundfish email group. To sign-up for the groundfish email group, click on the ''subscribe the the Groundfish Email Group'' link on the following website: *https://www.fisheries.noaa.gov/species/west-coast-groundfish#commercial.* The guide and this final rule will also be available on the West Coast Region's website (see **ADDRESSES**) and upon request.

*Paperwork Reduction Act (PRA) Recordkeeping and Reporting Requirements*

This action contains changes to information collection requirements under OMB Control Number 0648–0573, West Coast Region Vessel Monitoring Requirement in the Pacific Coast Groundfish Fishery, described in this final rule, which have been submitted to the Office of Management and Budget (OMB).

The first change is to adjust the VMS signal transmissions for certain vessels using NMFS type-approved vessel monitoring system units, including limited entry groundfish vessels, vessels using non-groundfish trawl gear in the EEZ (ridgeback prawn, California halibut, and sea cucumber trawl), and any vessels that use open access gear to take and retain, or possess groundfish in the EEZ or land groundfish taken in the EEZ (salmon troll, prawn trap, Dungeness crab, halibut longline, California halibut line gear, and sheephead trap). A NMFS type-approved VMS mobile transceiver unit continuously provides the vessel's position throughout the fishing season. Vessel owners would be required to increase their transmission rates from once-per-hour to four-times-per-hour. Vessels that are operating with electronic monitoring or in port for an extended period of time, will be exempt from this increase and allowed to continue with a rate of one-time-per-hour. The proposed change will not affect the number of entities required to comply with this requirement.

The next change is to adjust notification requirements for groundfish trawl vessels testing gear. Vessels participating in the shorebased IFQ, MS, or C/P Sectors will be able to declare ''gear/equipment testing'' and receive an exemption from observer coverage. This action would not affect the number of entities required to comply with the declaration requirement. Therefore, the proposed change would not be expected to increase the time or cost burden associated with this requirement. Lastly, this action allows Pacific whiting catcher vessels to change their declarations at-sea. After vessels have met their delivery obligations, they can immediately change their declaration from ''Pacific whiting motherships sector'' to ''Pacific whiting shorebased IFQ'' to make a tow and offload on shore. This action would not be expected to change the time or cost burden or number of entities associated with this requirement.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, and Indian Fisheries.

Dated: May 18, 2020.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NOAA amends 50 CFR part 660 is as follows:

## PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.11, revise the definition of ''Continuous transiting or transit through'' and add the definition of ''Gear testing'' in alphabetical order to read as follows:

**§ 660.11 General definitions.**

* * * * *

*Continuous transiting or transit through* means that a vessel crosses a groundfish conservation area or EFHCA on a heading as nearly as practicable to a direct route, consistent with navigational safety, while maintaining expeditious headway throughout the transit without loitering or delay.

* * * * *

*Gear testing* means the deployment of lawful gear without retaining fish, for the following purposes, including, but not limited to: Deployment of nets using open codends; calibration of engines and transmission under load (*i.e.,* towing a net with an open codend); deployment of wire and/or doors; testing new electronic equipment associated with deploying fishing gear; and testing and calibration of newly installed propulsion systems (*i.e.,* engine, transmission, shaft, propeller, etc.).

* * * * *

■ 3. In § 660.13, revise paragraph (d)(1)(ii) and add paragraph (d)(4)(iv)(A)(*30*) to read as follows:

**§ 660.13 Recordkeeping and reporting.**

* * * * *

(d) * * *

(1) * * *

(ii) Limited entry midwater trawl vessels targeting Pacific whiting may change their declarations while at sea between the Pacific whiting shorebased IFQ sector and the mothership sector as specified at paragraph (d)(4)(iv)(A) of this section. The declaration must be made to NMFS before a different sector is fished.

* * * * *

(4) * * *

(iv) * * *

(A) * * *

(*30*) Gear testing.

* * * * *

■ 4. In § 660.14, revise paragraphs (d)(1), (d)(2) introductory text, and (d)(3), and (5) to read as follows:

**§ 660.14 Vessel Monitoring System (VMS) requirements.**

* * * * *

(d) * * *

(1) Obtain a NMFS OLE type-approved mobile transceiver unit and have it installed on board your vessel in accordance with the instructions provided by NMFS OLE. You may obtain a copy of the VMS installation and operation instructions from the NMFS OLE West Coast Region, VMS Program Manager upon request at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: 888–585–5518 or *wcd.vms@noaa.gov.*

* * * * *

(2) Activate the mobile transceiver unit, submit an activation report at least 72 hours prior to leaving port on a trip in which VMS is required, and receive confirmation from NMFS OLE that the VMS transmissions are being received before participating in a fishery requiring the VMS. Instructions for submitting an activation report may be obtained from the NMFS OLE West Coast Region, VMS Program Manager upon request at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: 888–585–5518 or *wcd.vms@noaa.gov.* An activation report must again be submitted to NMFS OLE following reinstallation of a mobile transceiver unit or change in service provider before the vessel may be used to fish in a fishery requiring the VMS.

* * * * *

(3) Operate and maintain the mobile transceiver unit in good working order continuously, 24 hours a day throughout the fishing year, unless such vessel is exempted under paragraph (d)(4) of this section.

(i) *Position frequency.* The mobile transceiver unit must transmit a signal

accurately indicating the vessel's position at least once every 15 minutes, 24 hours a day, throughout the year unless an exemption in paragraph (d)(3)(ii) of this section applies or a valid exemption report, as described in paragraph (d)(4) of this section, has been received by NMFS OLE. The signal indicating the vessel's position can consist of either: A single position report transmitted every 15 minutes; or a series of position reports, at no more than a 15 minute interval, combined and transmitted at least once every hour.

(ii) *Exemptions to position frequency requirement.*—(A) *Electronic monitoring exemption.* If a vessel has an electronic monitoring system installed and in use for the duration of a given fishing year, the mobile transceiver unit must transmit a signal at least once every hour.

(B) *Midwater trawl exemption.* If a limited entry trawl vessel is fishing with midwater trawl gear under declarations in paragraph (d)(4)(iv)(A) of this section, the mobile transceiver unit must transmit a signal at least once every hour.

(C) *In port exemption.* If a vessel remains in port for an extended period of time, the mobile transceiver unit must transmit a signal at least once every four hours. The mobile transceiver unit must remain in continuous operation at all times unless the vessel is exempt under paragraph (d)(4) of this section.

* * * * *

(5) When aware that transmission of automatic position reports has been interrupted, or when notified by NMFS OLE that automatic position reports are not being received, contact NMFS West Coast Region, VMS Program Manager upon request at 7600 Sand Point Way NE, Seattle, WA 98115–6349, phone: 888–585–5518 or *wcd.vms@noaa.gov* and follow the instructions provided to you. Such instructions may include, but are not limited to, manually communicating to a location designated by NMFS OLE the vessel's position or returning to port until the VMS is operable.

* * * * *

■ 5. In § 660.112, revise paragraph (a)(4) and add paragraphs (a)(7) and (b)(1)(xvii) to read as follows:

**§ 660.112 Trawl fishery—prohibitions.**

* * * * *

(a) * * *

(4) *Observers.* (i) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program without observer coverage unless exempt from the observer coverage requirement for gear testing activity and have satisfied the declaration and notification requirements, as described in § 660.140(h), § 660.150(j), or § 660.160(g).

(ii) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program if the vessel is inadequate or unsafe for observer deployment as described at § 660.12(e).

(iii) Fail to maintain observer coverage in port as specified at § 660.140(h)(1)(i).

* * * * *

(7) *Gear testing.* (i) Retain fish while gear testing.

(ii) Fish with a closed codend, use terminal gear (*i.e.,* hooks), or fish with open pot gear while gear testing.

(iii) Test gear in groundfish conservation areas described in § 660.70, or EFHCAs described in §§ 660.76 through 660.79.

(iv) Test experimental gear, or any other gear not currently approved for groundfish fishing.

* * * * *

(b) * * *

(1) * * *

(xvii) When declared into the limited entry groundfish non-trawl Shorebased IFQ fishery, retain fish caught with fixed gear in more than one IFQ management area, specified at § 660.140(c)(1), on the same trip.

* * * * *

■ 6. In § 660.140, add paragraphs (c)(2) and (h)(1)(i)(A)(*5*) to read as follows:

**§ 660.140 Shorebased IFQ Program.**

* * * * *

(c) * * *

(2) *Moving pot or trap gear between multiple IFQ management areas.* A vessel using fixed gear declared into the limited entry groundfish non-trawl Shorebased IFQ fishery may deploy pot or trap gear in multiple IFQ management areas on a trip provided the vessel does not retrieve gear from more than one IFQ management area during a trip.

* * * * *

(h) * * *

(1) * * *

(i) * * *

(A) * * *

(*5*) Is exempt from the requirement to maintain observer coverage as specified in this paragraph (h) while gear testing as defined in § 660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by § 660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.

* * * * *

■ 7. In § 660.150, add paragraph (j)(1)(i)(C) to read as follows:

**§ 660.150 Mothership (MS) Coop Program.**

* * * * *

(j) * * *

(1) * * *

(i) * * *

(C) *Gear testing exemption.* Vessels are exempt from the requirement to maintain observer coverage as specified in this paragraph (j) while gear testing as defined at § 660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by § 660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.

* * * * *

■ 8. In § 660.160, add paragraph (g)(1)(iv) to read as follows:

**§ 660.160 Catcher/processor (C/P) Coop Program.**

* * * * *

(g) * * *

(1) * * *

(iv) *Gear testing exemption.* Vessels exempt from the requirement to maintain observer coverage as specified in this paragraph (g) while gear testing as defined at § 660.11. The vessel operator must submit a valid declaration for gear/equipment testing, as required by § 660.13(d)(4)(iv)(A), and must notify the Observer Program of the gear testing activity at least 48 hours prior to departing on a trip to test gear/equipment.

* * * * *

[FR Doc. 2020–11011 Filed 6–10–20; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 85, No. 113
Thursday, June 11, 2020

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2020–0468; Product Identifier 2018–SW–046–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Leonardo S.p.A. Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all Leonardo S.p.A. Model A119 and AW119 MKII helicopters. This proposed AD was prompted by reports that certain fuel control units (FCU) may not have been calibrated to specification during overhaul. This proposed AD would require revising the rotorcraft flight manual (RFM) for your helicopter and installing a placard to prohibit intentional entry into autorotation. This proposed AD would also allow replacement of an affected FCU as an optional terminating action for the RFM revision and placard installation. The FAA is proposing this AD to address the unsafe condition on these products.

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

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

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

For service information identified in this NPRM, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* 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.

### 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–2020–0468; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the 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 FURTHER INFORMATION CONTACT:** Clark Davenport, Flight Test Analyst, Flight Test Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5151; email *clark.davenport@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0468; Product Identifier 2018–SW–046–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

### Discussion

EASA, which is the Technical Agent for the Member States of the European Union, issued EASA AD 2018–0124, dated June 5, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Leonardo S.p.A. Model A119 and AW119 MKII helicopters. EASA advises that certain FCUs may not have been calibrated to specification during overhaul, and that this condition, if not corrected, can lead to N1 fluctuations, hung engine starts, and the inability to recover power during autorotation training, possibly resulting in reduced control of the helicopter. To address this unsafe condition, the EASA AD requires amendment of the applicable RFM and installation of a placard to prohibit intentional entry into autorotation. The EASA AD also allows removal of the RFM limitation and placard after replacement of an affected FCU.

You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0468.

### Related Service Information Under 1 CFR Part 51

Leonardo S.p.A. has issued Leonardo Helicopters Emergency Alert Service Bulletin 119–089, Revision A, dated June 5, 2018. This service information describes procedures for revising the RFM and installing a placard in the cockpit.

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

### FAA's Determination

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

**Proposed Requirements of This NPRM**

This proposed AD would require accomplishing the actions specified in the service information described previously.

**Interim Action**

The FAA considers this proposed AD interim action. If final action is later identified, the FAA might consider further rulemaking.

**Costs of Compliance**

The FAA estimates that this proposed AD affects 64 helicopters of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 2 work-hours × $85 per hour = $170 | $50 | $220 | $14,080 |

The FAA has received no definitive data that would enable it to provide cost estimates for the optional terminating action specified in this proposed AD.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Leonardo S.p.A.:** Docket No. FAA–2020–0468; Product Identifier 2018–SW–046–AD.

**(a) Comments Due Date**

The FAA must receive comments by July 27, 2020.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Leonardo S.p.A. Model A119 and AW119 MKII helicopters, certificated in any category.

**(d) Subject**

Joint Aircraft Service Component (JASC) Code 1100, Placards and markings.

**(e) Reason**

This AD was prompted by reports that certain fuel control units (FCU) may not have been calibrated to specification during overhaul. The FAA is issuing this AD to address certain FCUs that may not have been calibrated to specification during overhaul. This condition, if not corrected, can lead to N1 fluctuations, hung engine starts, and the inability to recover power during autorotation training, possibly resulting in reduced control of the helicopter.

**(f) Compliance**

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

**(g) Definitions**

For the purposes of this AD, the definitions in paragraphs (g)(1) through (3) of this AD apply.

(1) An affected FCU is one that is identified in section 1.A., ''Effectivity,'' of Leonardo Helicopters Emergency Alert Service Bulletin 119–089, Revision A, dated June 5, 2018.

(2) Group 1 helicopters are those that have an affected FCU installed.

(3) Group 2 helicopters are those that do not have an affected FCU installed.

**(h) Required Rotorcraft Flight Manual (RFM) Amendment**

For Group 1 helicopters: Before further flight involving intentional autorotation, or within 30 days after the effective date of this AD, whichever occurs first, revise the Limitations Section of the RFM for your helicopter in accordance with paragraph 4. of the Accomplishment Instructions of Leonardo Helicopters Emergency Alert Service Bulletin 119–089, Revision A, dated June 5, 2018.

**(i) Required Placard Installation**

For Group 1 helicopters: Concurrently with the RFM amendment required by paragraph (h) of this AD, install a placard in the cockpit in accordance with paragraph 3. of the Accomplishment Instructions of Leonardo Helicopters Emergency Alert Service Bulletin 119–089, Revision A, dated June 5, 2018.

**(j) Optional Terminating Action**

For Group 1 helicopters: Replacing the affected FCU with a non-affected FCU allows the amendment to be removed from the RFM for your helicopter and the placard to be removed from the helicopter.

**(k) Parts Installation Prohibition**

(1) For Group 1 helicopters: Do not install an affected FCU on any helicopter after replacement with a non-affected FCU.

(2) For Group 2 helicopters: Do not install an affected FCU on any helicopter after the effective date of this AD.

**(l) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Clark Davenport,

Flight Test Analyst, Flight Test Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5151; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

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

**(m) Related Information**

(1) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2018–0124, dated June 5, 2018. This EASA AD may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0468.

(2) For service information identified in this AD, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G.Agusta 520, 21017 C.Costa di Samarate (Va) Italy; telephone +39–0331–225074; fax +39–0331–229046; or at *https://www.leonardocompany.com/en/home.* 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.

Issued on June 5, 2020.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2020–12586 Filed 6–10–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2020–0570; Product Identifier 2019–SW–121–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to supersede Airworthiness Directive (AD) 2018–26–02 for Airbus Helicopters (previously Eurocopter France) Model AS350B3, EC130B4, and EC130T2 helicopters. AD 2018–26–02 requires inspecting the pilot's and co-pilot's throttle twist for proper operation. Since the FAA issued AD 2018–26–02, the FAA received a public comment that prompted additional review. This proposed AD would retain the requirements of AD 2018–26–02 and add calendar time compliance times for the required actions. The actions of this proposed AD are intended to address an unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by July 27, 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–2020–0570; 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 the view this 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:** George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *george.schwab@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 AD 2018–26–02, Amendment 39–19532 (83 FR 66093, December 26, 2018) (''AD 2018–26–02'') for Airbus Helicopters Model AS350B3 and EC130B4 helicopters with an ARRIEL 2B1 engine with the two-channel Full Authority Digital Engine Control (FADEC) and with new twist grip modification (MOD) 073254 (for Model AS350B3 helicopters) or MOD 073773 (for Model EC130B4 helicopters) installed, and Model AS350B3 and EC130T2 helicopters with an ARRIEL 2D engine installed. AD 2018–26–02 requires repetitively inspecting the wiring, performing an insulation test, inspecting the pilot and copilot throttle twist grip controls, and testing the pilot and copilot throttle twist grip controls for proper functioning.

AD 2018–26–02 was prompted by EASA AD No. 2017–0059, dated April 6, 2017 (EASA AD 2017–0059), issued by EASA, which is the Technical Agent for the Member States of the European Union. EASA advised that the switches in the engine ''IDLE'' or ''FLIGHT'' control system could be affected by the corrosive effects of a salt-laden atmosphere, which could lead to engine power loss. EASA advised that this condition, if not detected and corrected, could, in case of failure of the other switch, prevent the pilot from switching from ''IDLE'' to ''FLIGHT'' mode during training of autorotation landing, making aborting the autorotation impossible, resulting in unintended touchdown.

**Actions Since AD 2018–26–02 Was Issued**

Since the FAA issued AD 2018–26–02, the FAA received comments from one commenter. The commenter requested the FAA clarify why the compliance time for the repetitive inspections required in AD 2018–26–02 is given in terms of hours time-in-service (TIS) without also requiring calendar compliance times. The commenter stated that a lot of operators do not operate their aircraft 660 hours TIS in a year and asked whether the FAA is concerned with calendar time. The FAA agrees. Since the unsafe condition involves corrosion, which has a direct relationship between calendar time and airworthiness, it is necessary to add calendar time compliance times for all required actions including the repetitive inspections in this proposed AD.

**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 about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop on other helicopters of the same type design.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed one document that co-publishes three Airbus Helicopters Emergency Alert Service Bulletin (EASB) identification numbers: No. 05.00.61, Revision 3, dated June 15, 2015, for Model AS350B3 helicopters; No. 05.00.41, Revision 2, dated June 15, 2015, for the non-FAA type certificated Model AS550C3 helicopter; and No. 05A009, Revision 3, dated June 15, 2015, for Model EC130B4 helicopters. EASB Nos. 05.00.61 and 05A009 are incorporated by reference in AD 2018–26–02 and are retained for the requirements of this AD. EASB No. 05.00.41 is not incorporated by reference in AD 2018–26–02 and is not incorporated by reference in this AD. This service information applies to helicopters with an ARRIEL 2B1 engine installed and describes procedures for a functional check and installation of protection for micro-contacts (microswitches) 53Ka, 53Kb, and 65K (IDLE/FLIGHT mode).

The FAA also reviewed one document that co-publishes three Airbus Helicopters EASB identification numbers: No. 05.00.77, Revision 1, dated June 15, 2015, for Model AS350B3 helicopters; No. 05.00.52, Revision 1, dated June 15, 2015, for the non-FAA type certificated Model AS550C3 helicopter; and No. 05A014, Revision 1, dated June 15, 2015, for Model EC130T2 helicopters. EASB Nos. 05.00.77 and 05A014 are incorporated by reference in AD 2018–26–02 and are retained for the requirements of this AD. EASB No. 05.00.52 is not incorporated by reference in this AD. This service information applies to helicopters with an ARRIEL 2D engine installed and describes procedures for a check of the protection for micro-contacts (microswitches) 53Ka, 53Kb, and 65K (IDLE/FLIGHT mode).

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.

**Proposed AD Requirements**

This proposed AD would retain the inspection requirements of AD 2018–26–02 and would include, before the next practice autorotation, within 100 hours TIS, or 6 months, whichever occurs first, inspecting the wiring, performing an insulation test, inspecting the pilot and copilot throttle twist grip controls, and testing the pilot and copilot throttle twist grip controls for proper functioning. This AD would also include calendar time requirements for the repetitive inspections to be completed at intervals not to exceed 330 hours TIS or 6 months, whichever occurs first, and at intervals not to exceed 660 hours TIS or 12 months, whichever occurs first, depending on operating conditions.

**Differences Between This Proposed AD and the EASA AD**

The EASA AD requires the initial inspections within 10 flight hours or 7 days; this proposed AD requires compliance before the next autorotation training flight, 100 hours TIS, or 6 months, whichever occurs earlier, as the unsafe condition only occurs when transitioning the throttle in-flight from flight to idle and back to flight, such as during a practice autorotation.

Additionally, the EASA AD requires installing Airbus Helicopters MOD 074263; this proposed AD does not as it does not correct the unsafe condition.

**Interim Action**

The FAA considers this proposed AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking then.

**Costs of Compliance**

The FAA estimates that this proposed AD would affect 617 helicopters of U.S. Registry. The FAA estimates that operators may incur the following costs in order to comply with this proposed AD. Labor costs are estimated at $85 per work-hour.

Inspecting the wiring, performing an insulation test, inspecting the pilot and copilot throttle twist grip controls, and testing the pilot and copilot throttle twist grip controls would take about 4 work-hours, for a total estimated cost of $340 per helicopter and $209,780 for the U.S. fleet per inspection cycle.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed, 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) 2018–26–02, Amendment 39–19532 (83 FR 66093, December 26, 2018), and adding the following new AD:

**Airbus Helicopters:** Docket No. FAA–2020–0570; Product Identifier 2019–SW–121–AD.

**(a) Applicability**

This AD applies to the following Airbus Helicopters helicopters, certificated in any category:

(1) Model AS350B3 helicopters with an ARRIEL 2B1 engine with the two-channel Full Authority Digital Engine Control (FADEC) and with new twist grip modification (MOD) 073254 or with an ARRIEL 2D engine installed;

(2) Model EC130B4 helicopters with an ARRIEL 2B1 engine with the two-channel FADEC and with new twist grip MOD 073773 installed; and

(3) Model EC130T2 helicopters with an ARRIEL 2D engine installed.

**(b) Unsafe Condition**

This AD defines the unsafe condition as failure of one of the two contactors, 53Ka or 53Kb, which can prevent switching from ''IDLE'' mode to ''FLIGHT'' mode during autorotation training making it impossible to recover from a practice autorotation and compelling the pilot to continue the autorotation to the ground. This condition could result in unintended touchdown to the ground at a flight-idle power setting during a practice autorotation, damage to the helicopter, and injury to occupants.

**(c) Affected ADs**

This AD replaces AD 2018–26–02, Amendment 39–19532 (83 FR 66093, December 26, 2018).

**(d) Comments Due Date**

The FAA must receive comments by July 27, 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) Before the next practice autorotation, within 100 hours time-in-service (TIS), or 6 months, whichever occurs first, inspect the wiring, perform an insulation test, inspect the pilot and copilot throttle twist grip controls, and test the pilot and copilot throttle twist grip controls for proper functioning by following the Accomplishment Instructions, paragraph 3.B.1 through 3.B.6, of Airbus Helicopters Emergency Alert Service Bulletin (EASB) No. 05.00.61, Revision 3, dated June 15, 2015, for Model AS350B3 helicopters with an ARRIEL 2B1 engine; EASB No. 05.00.77, Revision 1, dated June 15, 2015, for Model AS350B3 helicopters with an ARRIEL 2D engine; EASB No. 05A009, Revision 3, dated June 15, 2015, for Model EC130B4 helicopters; or EASB No. 05A014, Revision 1, dated June 15, 2015, for Model EC130T2 helicopters, as appropriate for your model helicopter.

(2) Repeat the inspections in paragraph (f)(1) of this AD at intervals not to exceed the following compliance times. For purposes of this AD, salt laden conditions exist when a helicopter performs a flight from a takeoff and landing area, heliport, or airport less than 0.5 statute mile from salt water or performs a flight within 0.5 statute mile from salt water below an altitude of 1,000 ft. above ground or sea level.

(i) For helicopters that have operated in salt laden conditions since the previous inspection required by this AD, at intervals not to exceed 330 hours TIS or 6 months, whichever occurs first.

(ii) For helicopters that have not operated in salt laden conditions since the previous inspection required by this AD, at intervals not to exceed 660 hours TIS or 12 months, whichever occurs first.

**(g) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: George Schwab, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Parkway, Fort Worth, Texas 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.

**(h) Additional Information**

The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD No. 2017–0059, dated April 6, 2017. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

**(i) Subject**

Joint Aircraft Service Component (JASC) Code: 7697, Engine Control System Wiring.

Issued on June 4, 2020.

**Lance T. Gant,**

*Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2020–12530 Filed 6–10–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–104591–18]**

**RIN 1545–BO67**

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

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to a notice of proposed rulemaking.

**SUMMARY:** This document contains a correction to a notice of proposed rulemaking (REG–104591–18) that was published in the **Federal Register** on May 13, 2020. The guidance on section 162(f) of the Internal Revenue Code (Code), as amended by legislation enacted in 2017, concerning the deduction of certain fines, penalties, and other amounts.

**DATES:** Written or electronic comments and requests for a public hearing are still being accepted and must be received by July 13, 2020.

**ADDRESSES:** Send submissions to Internal Revenue Service, CC:PA: LPD:PR (REG–104591–18), Room 5205, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submission of comments electronically is strongly suggested, as the ability to respond to mail may be delayed. It is recommended that comments and requests for a public hearing be submitted electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–104591–18).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Sharon Y. Horn (202) 317–4426; concerning the information reporting requirement, Nancy L. Rose (202) 317–5147; concerning submissions of comments and requests for a public hearing, Regina L. Johnson, (202) 317–5177 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

The proposed regulations that are the subject of this correction are under section 162(f) of the Internal Revenue Code.

### Need for Correction

As published, the notice of proposed rulemaking (REG–104591–18) contains errors that needs to be corrected.

**Correction of Publication**

Accordingly, the notice of proposed rulemaking (REG–104591–18) that was the subject of FR Doc.2020–08649, published at 85 FR 28524 (May 13, 2020), is corrected to read as follows:

1. On page 28529, first column, the fourth line, the language ''amounts or incurred paid'' is corrected to read ''amounts paid or incurred''.

2. On page 28531, second column, the sixth line from the top of the second full paragraph, the language ''and by the Office'' is corrected to read ''and the Office''.

**§ 1.162–21 [Corrected]**

■ 3. On page 28536, the third column, paragraph (f)(4), the language ''A suit, agreement, or otherwise includes, but is not limited to, settlement agreements, non-prosecution agreements, deferred prosecution agreements, judicial proceedings, administrative adjudications, decisions issued by officials, committees, commissions, boards of a government or governmental entity, and any legal actions or hearings which impose a liability on the taxpayer or pursuant to which the taxpayer assumes liability''. is corrected to read ''A suit, agreement agreements; non-prosecution agreements; deferred prosecution agreements; judicial proceedings; administrative adjudications; decisions issued by officials, committees, commissions, boards of a government or governmental entity; and any legal actions or hearings which impose a liability on the taxpayer or pursuant to which the taxpayer assumes liability''.

■ 4. On page 28537, second column, the last sentence of paragraph (g)(3)(i), the language ''Corp. B presents evidence, as described in paragraph (b)(3)(ii) of this section, to substantiate that the expenses Corp. B will incur to upgrade the engines will be amounts paid to come into compliance with State X's law''. is corrected to read ''Corp. B presents invoices to substantiate that the expenses Corp. B will incur to upgrade the engines will be amounts paid to come into compliance with State X's law.''.

■ 5. On page 28537, second column, the first sentence of paragraph (g)(3)(ii), the language ''Because the agreement describes the specific action Corp. B must take to come into compliance with State X's law, and Corp. B presents invoices to establish that the agreement obligates it to incur costs to come into compliance with a law, paragraph (a) of this section would not preclude a deduction for the amounts Corp. B incurs to come into compliance.'' is corrected to read ''Because the agreement describes the specific action Corp. B must take to come into compliance with State X's law, and Corp. B provides evidence, as described in paragraph (b)(3)(ii) of this section to establish that the agreement obligates it to incur costs to come into compliance with a law, paragraph (a) of this section would not preclude a deduction for the amounts Corp. B incurs to come into compliance.''.

■ 6. On page 28537, second column, the third sentence of paragraph (g)(4)(ii), the language, ''Provided Corp. D establishes, under paragraph (b)(3) of this section, that the $60,000 constitutes restitution, paragraph (a) does not apply.'' is corrected to read ''Provided Corp. D establishes, under paragraph (b)(3) of this section, that the $60,000 constitutes restitution, paragraph (a) of this section does not apply.

**Martin V. Franks,**

*Branch Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2020–12628 Filed 6–10–20; 8:45 am]

**BILLING CODE 4830–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2019–0618; FRL–10010–05–Region 4]**

### Air Plan Approval; TN; Removal of the Vehicle I/M Program, Middle Tennessee Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), through a letter dated February 26, 2020. Specifically, EPA is proposing to approve the removal of Tennessee's inspection and maintenance (I/M) program requirements for Davidson, Sumner, Rutherford, Williamson and Wilson Counties in Tennessee (also known as the Middle Tennessee Area) from the federally-approved SIP because removing the requirements is consistent with the Clean Air Act (CAA or Act) and applicable regulations.

**DATES:** Comments must be received on or before July 13, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0618 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9222. Ms. Sheckler can also be reached via electronic mail at *sheckler.kelly@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Davidson County began implementing an I/M program in 1985. *See* Davidson County Resolution No. R83–1471. The program required all light-duty motor vehicles registered in Davidson County to be inspected annually for compliance with emissions performance and anti-tampering test criteria.

With the passage of the 1990 CAA amendments, the Middle Tennessee Area was designated as a moderate ozone nonattainment area for the 1979 1-hour ozone NAAQS. *See* 56 FR 56694 (November 6, 1991). Under section 182 of the CAA, I/M programs are required for areas that are designated as moderate or above nonattainment for ozone, and the existing I/M program in Davidson County was expanded to the Middle Tennessee Area. In 1994, Tennessee submitted a SIP revision containing an I/M program for the Middle Tennessee Area, which EPA approved. *See* 60 FR 38694 (July 28, 1995). As part of that

action, EPA incorporated the State's I/M rules at Tennessee Air Pollution Control Regulations (TAPCR) 1200–03–29 and Davidson County's I/M rules at Regulation 8 into the SIP. *See id.* On October 30, 1996, EPA redesignated the Middle Tennessee Area to attainment for the 1-hour ozone NAAQS and approved a maintenance plan with the I/M program as a control strategy. *See* 61 FR 55903. The 1979 1-hour ozone NAAQS was revoked, effective June 15, 2005. *See* 69 FR 23951 (April 30, 2004).

On July 18, 1997 (62 FR 38856), EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). In December 2002, the Middle Tennessee Area entered into EPA's Early Action Compact (EAC) program. As part of the EAC for the Middle Tennessee Area, the I/M program was identified as an existing control strategy in the SIP. The Middle Tennessee Area met the EAC requirements by December 31, 2007, demonstrating attainment of the 1997 8-hour ozone NAAQS. As a result of meeting the EAC agreement, on April 2, 2008, EPA designated the Middle Tennessee Area as attainment for the 1997 8-hour ozone NAAQS. *See* 73 FR 17897. The 1997 8-hour ozone NAAQS was revoked, effective April 6, 2015. *See* 80 FR 12264 (March 6, 2015).

The ozone NAAQS was revised in 2008 to a value of 0.075 ppm and again in 2015 to 0.070 ppm. *See* 73 FR 16483 (March 27, 2008) and 80 FR 65292 (October 26, 2015). The Middle Tennessee Area was designated as unclassifiable/attainment and attainment/unclassifiable for the 2008 and 2015 ozone NAAQS, respectively. *See* 40 CFR 81.343. The Middle Tennessee Area is currently in attainment with all ozone NAAQS. *See id.*

On May 15, 2018, a Tennessee law was signed that states that ''no inspection and maintenance program shall be employed in this state on or after the effective date of this act.'' *See* Tenn. Code Ann. § 68–201–119. The Tennessee law states that it ''shall take effect [120] calendar days following the date on which the [EPA] approves a revised state implementation plan. . .'' *See* Motor Vehicles—Inspection and Inspectors—Air Pollution, 2018 Tennessee Laws Pub. Ch. 953 (H.B. 1782). Accordingly, Tennessee submitted the February 26, 2020, SIP revision requesting that EPA remove the requirements to implement an I/M program for the Middle Tennessee Area.[1] A description of the SIP revision and EPA's analysis is provided in Section II below.

## II. What is EPA's analysis of Tennessee's submittal?

Through a letter dated February 26, 2020,[2] Tennessee requested that TAPCR 1200–03–29 and Davidson County's Regulation 8 be removed from the Tennessee SIP. In addition, Tennessee requested that EPA remove the requirement for the Middle Tennessee Area to implement an I/M program as part of the EAC that was approved by EPA into the non-regulatory portion of the Tennessee SIP on August 26, 2005. *See* 70 FR 50199. Tennessee also provided a non-interference demonstration to support the removal of the vehicle I/M program for the Middle Tennessee Area.

As discussed in Section I above, the Middle Tennessee Area implemented the I/M program requirements as a control strategy to meet the 1979 1-hour ozone NAAQS and expanded it as part of the EAC addressing the 1997 8-hour ozone NAAQS. Currently, Davidson, Sumner, Rutherford, Williams and Wilson Counties in Tennessee are designated attainment, unclassifiable/attainment, or attainment/unclassifiable for all ozone NAAQS. *See* 40 CFR 81.343.

EPA is proposing to approve the removal of the I/M requirements for the Middle Tennessee from the Tennessee SIP, including TAPCR 1200–03–29 and Davidson County's Regulation 8.[3] EPA is also proposing to find that the removal of the I/M program requirements for the Middle Tennessee Area is consistent with CAA section 110(l). Section 110(l) of the CAA requires that a revision to the SIP not interfere with any applicable requirements concerning attainment, reasonable further progress (as defined in section 171), or any other applicable requirements of the CAA. EPA evaluates section 110(l) non-interference demonstrations on a case-by-case basis considering the circumstances of each SIP revision. EPA interprets section 110(l) as applying to all NAAQS that are in effect. For I/M SIP revisions, the most relevant pollutants to consider are ozone precursors (*i.e.,* nitrogen oxides ($NO_x$) and volatile organic compounds (VOCs)).

As mentioned above, Tennessee's February 26, 2020, SIP revision included a non-interference demonstration to support the State's request to remove the SIP-approved I/M program requirements for the Middle Tennessee counties of Davidson, Sumner, Rutherford, Williams, and Wilson. Tennessee's non-interference demonstration evaluates the impact that the removal of the I/M program for the Middle Tennessee Area would have on Tennessee's ability to attain and maintain any of the NAAQS. Based on the analysis below, EPA is proposing to find that removal of the I/M program requirements for the Middle Tennessee Area meets the requirements of the CAA section 110(l) because it would not interfere with attainment or maintenance of any NAAQS or any other requirement of the CAA.[4] [5] [6]

[1] Tenn. Code Ann. § 68–201–119(c) allows Tennessee counties to retain local I/M programs under certain conditions. However, as Tennessee is requesting removal of the I/M program from the SIP, EPA's analysis in this proposal assumes that no I/M program will be implemented in the Middle Tennessee Area. This proposed action does not preclude local I/M programs from being retained at a local level.

[2] EPA received Tennessee's SIP revision on February 27, 2020.

[3] TAPCR 1200–03–29 is applicable only to Davidson, Hamilton, Rutherford, Sumner, Williamson, and Wilson Counties. In a separate notice of proposed rulemaking (NPRM), EPA proposed to remove Hamilton County from that chapter of the SIP-approved Tennessee rules. EPA is proposing in this NPRM to remove Davidson, Rutherford, Sumner, Williamson, and Wilson Counties from TAPCR 1200–03–29. Additionally, EPA is proposing that if it removes all applicable counties from TAPCR 1200–03–29, to also remove the remainder of TAPCR 1200–03–29 from the SIP.

[4] The initial designations for the course particulate matter ($PM_{10}$) NAAQS were completed on March 15, 1991. *See* 56 FR 11101. The entire state of Tennessee was designated as attainment for $PM_{10}$ and has been attainment for every $PM_{10}$ standard thereafter. The pollution control systems for light-duty gasoline vehicles subject to the I/M program are not designed to reduce emissions of $PM_{10\geq}$ therefore, removing the I/M program requirements will not have any impact on ambient concentrations of $PM_{10}$. EPA proposes to find that removal of the SIP-approved I/M program requirements for the Middle Tennessee Area would not interfere with continued attainment or maintenance of the $PM_{10}$ NAAQS.

[5] On June 22, 2010, EPA revised the 1-hour sulfur dioxide ($SO_2$) NAAQS to 75 parts per billion (ppb) which became effective on August 23, 2010. *See* 75 FR 35520. On January 9, 2018, EPA designated most of the state of Tennessee, including the counties in the Middle Tennessee Area, as attainment/unclassifiable for the 2010 $SO_2$ NAAQS. *See* 83 FR 1098. EPA has designated Sullivan County, Tennessee, as nonattainment and Sumner County as unclassifiable for the 2010 1-hour $SO_2$ NAAQS. *See* 78 FR 47191 (August 5, 2013), and 81 FR 45039 (July 12, 2016). The pollution control systems for light-duty gasoline vehicles subject to the I/M program are not designed to reduce emissions for $SO_{2\geq}$ therefore, removing the I/M program requirements will not have any impact on ambient concentrations of $SO_2$. EPA proposes to find that removal of the SIP-approved I/M program requirements for the Middle Tennessee Area would not interfere with continued attainment or maintenance of the $SO_2$ NAAQS.

[6] On November 12, 2008, EPA promulgated a revised lead NAAQS of 0.15 µg/$m^3$. *See* 73 FR 66964. On November 22, 2011, EPA designated a majority of the State of Tennessee, including the counties in the Middle Tennesse Area as unclassifiable/attainment for the 2008 lead NAAQS. The Bristol Area in Sullivan County was designated nonattainment; and the Knox County Area was later designated unclassifiable. *See* 76 FR 72907; *see also*

*Non-Interference Analysis for the Ozone NAAQS*

On February 8, 1979 (44 FR 8202), EPA promulgated the 1-hour ozone NAAQS of 0.12 parts per million (ppm).[7] On July 18, 1997 (62 FR 38856), EPA promulgated a revised 8-hour ozone standard of 0.08 ppm.[8] Subsequently, on March 12, 2008, EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 ppm to provide increased protection of public health and the environment. *See* 73 FR 16436 (March 27, 2008). The 2008 ozone NAAQS retain the same general form and averaging time as the 0.08 ppm NAAQS set in 1997 but are set at a more protective level. Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS are attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. *See* 40 CFR 50.15. On October 26, 2015 (80 FR 65292), EPA published a final rule lowering the level of the 8-hour ozone NAAQS to 0.070 ppm or 70 ppb and retaining the same form.

The Middle Tennessee Area is designated as attainment or unclassifiable/attainment for all ozone NAAQS.[9] *See* 40 CFR 81.343. Ambient air quality monitoring for ozone is being conducted at five locations in the Middle Tennessee Area. In the February 26, 2020, SIP revision, the State provides recent 8-hour ozone design values in ppb (see Table 1). The values in Table 1 below indicate attainment of the 2015 8-hour NAAQS of 70 ppb.

TABLE 1—MIDDLE TENNESSE AREA MONITOR DESIGN VALUES

| Site name | Ozone design value, ppb | | | | |
|---|---|---|---|---|---|
| | 2013–2015 | 2014–2016 | 2015–2017 | 2016–2018 | 2017–2019 |
| Trinity Lane, Davidson County | 62 | 66 | 66 | 66 | 65 |
| Percy Priest, Davidson County | 65 | 67 | 64 | 67 | 65 |
| Rockland Recreation Area, Sumner County | 67 | 67 | 66 | 66 | 66 |
| Fairview Middle School, Williamson County | 62 | 61 | 60 | 60 | 60 |
| Cedars of Lebanon State Park, Wilson County | 62 | 64 | 63 | *64 | *61 |

*Not a valid design value because the monitor did not meet data completeness requirements in 2018. There was an issue following the installation of the new monitoring shelter and TDEC invalidated data leading up to the correction of the issue.

Tennessee's non-interference analysis includes modeling to calculate ozone precursor emissions, as well as a sensitivity analysis to demonstrate the impact of emissions increases on monitored ozone values. Tennessee's non-interference demonstration utilized EPA's MOVES2014 emission modeling system to estimate ozone precursor emissions for mobile sources—both on-road and non-road. Tennessee chose 2022 as the future year for the State's non-interference demonstration because it is the year that it anticipates that the Middle Tennessee Area will cease implementation of the I/M program due to the CAA's SIP processing timeframe and the language of Tenn. Code Ann. § 68–201–119. The point source emissions for the Middle Tennessee Area were obtained from the 2014 version 2 National Emissions Inventory (NEI) and grown to the year 2022 using the appropriate EPA growth factors or using engineering judgment, as detailed in Appendices H and I of the February 26, 2020, SIP revision. For non-point sources, the inventory was developed using EPA established methodologies published by EPA,[10] as detailed in Appendix J of the February 26, 2020, SIP revision. Tennessee calculated projected emissions in the year 2022 by adding all four sectors (on-road, point, non-road, and non-point) together.

Table 2 shows the total projected emissions in 2022 with the I/M program in the Middle Tennessee Area. Table 3 shows the total projected emissions in 2022 without the I/M program in the Middle Tennessee Area.[11] By 2022, emission benefits resulting from Tennessee's I/M program for the Middle Tennessee Area are predicted to be a 478.52 ton per year (tpy) reduction of $NO_X$, and a 593.10 tpy reduction of VOCs. On a percentage basis, removal of the I/M program will result in a 4.2 percent increase in $NO_X$ emissions and a 12.4 percent increase in VOCs. The differences in the two scenarios for all four sectors combined is a 1.9 percent increase in $NO_X$ and a 1.7 percent increase in VOC emissions.

TABLE 2—MIDDLE TENNESSEE AREA TOTAL 2022 PROJECTED EMISSIONS OF $NO_X$ AND VOC (in tpy) WITH THE I/M PROGRAM

| Sector | $NO_X$ | VOC |
|---|---|---|
| On road | 11,309 | 4,780 |
| Point | 4,455 | 3,867 |
| Nonroad | 5,413 | 3,451 |
| Non-Point | 3,504 | 22,690 |

75 FR 71033 (November 22, 2011). Subsequently, the Bristol Area was redesignated to attainment. *See* 81 FR 44210 (July 7, 2016). Effective January 1, 1996, EPA banned the sale of leaded fuel for use in on-road vehicles. The pollution control systems for light-duty gasoline vehicles subject to the I/M program are not designed to reduce emissions for lead; therefore, removal of the I/M program requirements would not cause an increase in emissions of lead. EPA proposes to find that removal of the SIP-approved I/M program requirements for the Middle Tennesse Area would not interfere with continued attainment or maintenance of the lead NAAQS.

[7] The 1979 1-hour ozone NAAQS was revoked, effective June 15, 2005. *See* 69 FR 23951 (April 30, 2004).

[8] The 1997 8-hour ozone NAAQS was revoked, effective April 6, 2015. *See* 80 FR 12264 (March 6, 2015).

[9] Visit *https://gispub.epa.gov/air/trendsreport/2019/#home* or *https://www.epa.gov/outdoor-air-quality-data* for air quality data including current status and trends for all NAAQS.

[10] *See* 2017 NEI Final Plan: Revised July 2018, available at *https://www.epa.gov/sites/production/files/2018-07/documents/2017_nei_plan_final_revised_jul2018.pdf*.

[11] Since the I/M program only impacts emissions in the on-road sector, the projected emissions in other sectors (point, non-road and non-point) are the same between the ''with the I/M program'' and the ''without the I/M program'' scenarios.

TABLE 2—MIDDLE TENNESSEE AREA TOTAL 2022 PROJECTED EMISSIONS OF $NO_X$ AND VOC (in tpy) WITH THE I/M PROGRAM—Continued

| Sector | $NO_X$ | VOC |
|---|---|---|
| Total | 24,681 | 34,788 |

TABLE 3—MIDDLE TENNESSEE AREA TOTAL 2022 PROJECTED EMISSIONS OF $NO_X$ AND VOC (in tpy) WITHOUT THE I/M PROGRAM

| Sector | $NO_X$ tpy | VOC tpy |
|---|---|---|
| On road | 11,788 | 5,373 |
| Point | 4,455 | 3,867 |
| Nonroad | 5,413 | 3,451 |
| Non-Point | 3,504 | 22,690 |
| Total | 25,160 | 35,382 |

TABLE 4—SUMMARY OF $NO_X$ AND VOC EMISSIONS INCREASES ASSOCIATED WITH REMOVING THE MIDDLE TENNESSEE AREA FROM THE I/M PROGRAM

| | $NO_X$ emissions in 2022 | VOC emissions in 2022 |
|---|---|---|
| Total On-Road Emissions for Middle TN Counties in Current I/M Program (tpy) | 11,309 | 4,780 |
| Total On-Road Emissions after Removing Middle TN Counties from I/M Program (tpy) | 11,788 | 5,373 |
| Total Emissions for Middle TN Counties in Current I/M Program (all sectors) (tpy) | 24,681 | 34,788 |
| Total Emissions after Removing Middle TN Counties from I/M Program (all sectors) (tpy) | 25,160 | 35,382 |
| Emissions Increases (tpy) | 479 | 593 |
| Emissions Increases (% of Total On-Road Emissions for Middle TN Counties) | 4.2% | 12.4% |
| Emissions Increases (% of Total Emissions for Middle TN Counties, all sectors) | 1.9% | 1.7% |

To further quantify the potential impact of removal of the I/M program, Tennessee completed a photochemical modeling sensitivity analysis. As shown in Table 5, the sensitivity analysis indicates that the largest increase in ozone concentration would be at the Percy Priest monitor at 0.262 ppb.

TABLE 5—RESULTS OF SENSITIVITY ANALYSIS, INCREASES OF OZONE CONCENTRATIONS AT MONITORS IN THE MIDDLE TENNESSEE AREA

| Site name | 2016–2018 ozone design value | Sensitivity analysis corresponding ozone increase due to combined $NO_X$ and VOC increases |
|---|---|---|
| Trinity Lane, Davidson County | 66 | 0.249 |
| Percy Priest, Davidson County | 67 | 0.262 |
| Rockland Recreation Area, Sumner County | 66 | 0.196 |
| Fairview Middle School, Williamson County | 60 | 0.186 |
| Cedars of Lebanon State Park, Wilson County | 64 | 0.178 |

EPA has evaluated the State's analysis and preliminarily agrees with its findings and conclusions. EPA therefore proposes to find that removal of the SIP-approved I/M program requirements for the Middle Tennessee Area would not interfere with any applicable requirement concerning attainment or maintenance of the ozone NAAQS.

*Non-Interference Analysis for the Fine Particulate Matter ($PM_{2.5}$) NAAQS*

On July 16, 1997, EPA established an annual $PM_{2.5}$ NAAQS of 15.0 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour $PM_{2.5}$ NAAQS of 65 $\mu g/m^3$, based on a 3-year average of the 98th percentile of 24-hour concentrations.[12] *See* 62 FR 38652 (July 18, 1997). On September 21, 2006, EPA retained the 1997 annual $PM_{2.5}$ NAAQS of 15.0 $\mu g/m^3$ but revised the 24-hour $PM_{2.5}$ NAAQS to 35 $\mu g/m^3$, based again on a 3-year average of the 98th percentile of 24-hour concentrations. *See* 71 FR 61144 (October 17, 2006). On December 14, 2012, EPA retained the 2006 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$ but revised the annual primary $PM_{2.5}$ NAAQS to 12.0 $\mu g/m^3$, based again on a 3-year average of annual mean $PM_{2.5}$ concentrations. *See* 78 FR 3086 (January 15, 2013).

EPA published designations for the 1997 annual $PM_{2.5}$ NAAQS on January 5, 2005 (70 FR 944) and April 14, 2005 (70 FR 19844), designating all counties in the Middle Tennessee Area attainment for the 1997 annual $PM_{2.5}$ NAAQS. On November 13, 2009 (74 FR

[12] The 1997 annual $PM_{2.5}$ NAAQS was revoked for areas designated as attainment, effective October 24, 2016. *See* 81 FR 58010 (August 24, 2016).

58688), and on January 15, 2015 (80 FR 2206), EPA published notices determining that the counties in the Middle Tennessee Area were designated unclassifiable/attainment for the 2006 24-hour $PM_{2.5}$ NAAQS and the 2012 annual $PM_{2.5}$ NAAQS, respectively.

In Tennessee's February 26, 2020, SIP revision, the State concluded that the removal of the counties in the Middle Tennessee Area from the Tennessee's SIP-approved I/M program would not interfere with attainment or maintenance of the $PM_{2.5}$ NAAQS. The pollution control systems for light-duty gasoline vehicles subject to the I/M program are not designed to reduce emissions of direct $PM_{2.5}$ and sulfate (*i.e.,* the primary precursor for $PM_{2.5}$ formation in the Southeast); therefore, removing counties from the program will not have any impact on ambient concentrations of $PM_{2.5}$ NAAQS. In addition, ambient air monitoring shows that $PM_{2.5}$ 24-hour design value for Middle Tennessee in 2019 is 18 $\mu g/m^3$, which is below the 24-hour NAAQS of 35 $\mu g/m^3$. Also, the annual design value in 2019 is 9.3 $\mu g/m^3$, which is below the annual NAAQS of 12.0 $\mu g/m^3$. The small increase in $NO_X$ emissions of 1.9 percent is expected to only cause a small increase in $PM_{2.5}$ design value.

EPA has evaluated the State's analysis and preliminarily agrees with its findings and conclusions. EPA therefore proposes to find that removal of the SIP-approved I/M program requirements for the Middle Tennessee Area would not interfere with continued attainment or maintenance of the $PM_{2.5}$ NAAQS.

*Non-Interference Analysis for the 2010 Nitrogen Dioxide ($NO_2$) NAAQS* [13]

The 2010 $NO_2$ 1-hour standard is set at 100 ppb, based on the 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474 (February 9, 2010). On February 17, 2012, EPA designated all counties in Tennessee as unclassifiable/attainment for the 2010 $NO_2$ NAAQS. *See* 77 FR 9532.

Based on the technical analysis in Tennessee's February 26, 2020, SIP revision, the projected increase in total $NO_X$ emissions (of which $NO_2$ is a component) in 2022 is 1.9 percent.[14] This increase is not expected to interfere with continued attainment of the $NO_2$ NAAQS in the Middle Tennessee Area. The 2019 design value for the 1-hour $NO_2$ NAAQS for the Middle Tennessee Area is 50 ppb.

[13] The annual standard of 53 ppb is based on the annual mean concentration. *See* 36 FR 8186 (April 30, 1971).

EPA has evaluated the State's analysis and preliminarily agrees with its findings and conclusions. For these reasons, EPA proposes to find that removal of the SIP-approved I/M program requirements for the Middle Tennessee Area would not interfere with continued attainment or maintenance of the $NO_2$ NAAQS.

*Non-Interference Analysis for the Carbon Monoxide (CO) NAAQS*

EPA promulgated the CO NAAQS in 1971 and has retained the standards since its last review of the standards in 2011. The primary NAAQS for CO consist of: (1) An 8-hour standard of 9 ppm, not to be exceeded more than once in a year (*i.e.,* the second highest, non-overlapping 8-hour average concentration cannot exceed the standard); and (2) a 1-hour average of 35 ppm, not to be exceeded more than once in a year. The Middle Tennessee Area has always been designated as unclassifiable/attainment for the CO NAAQS.

In Tennessee's February 26, 2020, SIP revision, the State concluded that the removal of counties in the Middle Tennessee Area from the SIP-approved I/M program would not interfere with attainment or maintenance of the CO NAAQS. MOVES2014 mobile emissions modeling results show an increase in CO emissions of 6.1 percent in the Middle Tennessee Area in 2022 as a result of removing the I/M program for the Middle Tennessee Area. This increase is not expected to interfere with continued attainment of the CO NAAQS in the Middle Tennessee Area. The 2018 design values for Tennessee for the 1-hour and 8-hour CO NAAQS are 1.8 ppm and 1.6 ppm, respectively. Preliminary design values for Tennessee for the 1-hour and 8-hour CO NAAQS in 2019 were 1.6 ppm and 1.8 ppm, respectively, which are less than 20 percent of the CO NAAQS for both the 1-hour and 8-hour standards.

EPA has evaluated the State's analysis and preliminarily agrees with its findings and conclusions. For these reasons, EPA proposes to find that removal of the SIP-approved I/M program requirements for the Middle Tennessee Area would not interfere with continued attainment or maintenance of the CO NAAQS.

## III. Proposed Action

EPA is proposing to approve the removal of the I/M requirements for the Middle Tennessee Area (*i.e.,* Davidson, Sumner, Rutherford, Williamson and Wilson Counties) from the Tennessee SIP. EPA is proposing to approve the removal of the I/M program requirements for the Middle Tennessee Area from the federally-approved SIP because removing the requirements is consistent with the CAA and applicable regulations.

## IV. Statutory and Executive Order Reviews

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

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

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: May 29, 2020.

**Mary Walker,**

*Regional Administrator, Region 4.*

[FR Doc. 2020–12536 Filed 6–10–20; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 83

**[EPA–HQ–OAR–2020–00044; FRL 10010–62–OAR]**

**RIN 2060–AU51**

## Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing processes that it would be required to undertake in promulgating regulations under the Clean Air Act (CAA) to ensure that information regarding the benefits and costs of regulatory decisions is provided and considered in a consistent and transparent manner. This proposed rulemaking addresses, among other things, issues raised in the June 13, 2018 advance notice of proposed rulemaking, ''Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process,'' and proposes how the concepts described in that advance document would be implemented in rulemakings conducted by the EPA using its authorities under the CAA. The EPA is proposing to establish procedural requirements governing the development and presentation of benefit-cost analyses (BCA), including risk assessments used in the BCA, for significant rulemakings conducted under the CAA. Together, these requirements would help ensure that the EPA implements its statutory obligations under the CAA, and describes its work in implementing those obligations, in a way that is consistent and transparent.

**DATES:** Comments must be received on or before July 27, 2020.

*Public Hearing:* The EPA will hold one or more virtual public hearings on this proposed rulemaking. These will be announced in a separate **Federal Register** publication that provides details, including specific dates, times, and contact information for these hearings.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–HQ–OAR–2020–00044, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. EPA–HQ–OAR–2020–00044 for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. 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 EPA, and no hand deliveries are currently accepted. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Leif Hockstad, Office of Air Policy and Program Support, Office of Air and Radiation, Environmental Protection Agency, Mail Code 6103A,1200 Pennsylvania Avenue NW, Washington, DC 20460; (202) 343–9432; email address: *hockstad.leif@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

Organization of this document. The following outline is provided to aid in locating information in this preamble.



### I. Public Participation

*A. Written Comments*

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2020–00044, 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

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.

*B. Public Hearing*

The EPA will hold one or more virtual public hearings on this proposed rulemaking. These will be announced in a separate **Federal Register** publication that provides details, including specific dates, times, and contact information for these hearings. Please note that EPA is deviating from its typical approach because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, EPA cannot hold in-person public meetings at this time.

## II. General Information

*A. Does this action apply to me?*

This proposed regulation does not regulate the conduct or determine the rights of any entity or individual outside the Agency, as this action pertains only to internal EPA practices. However, the Agency recognizes that any entity or individual interested in EPA's regulations may be interested in this proposal. For example, this proposal may be of particular interest to entities and individuals concerned with how EPA conducts benefit and cost analyses.

*B. What is the Agency's authority for taking this action?*

The Agency proposes to take this action under the CAA using 42 U.S.C. 7601(a)(1). Section 301(a)(1) of the CAA provides authority to the Administrator ''to prescribe such regulations as are necessary to carry out his functions'' under the CAA. Such authority extends to internal agency procedures that increase the Agency's ability to provide consistency and transparency to the public in regard to the rulemaking process under the CAA. The EPA solicits comment on whether additional or alternative sources of authority are appropriate bases for this proposed regulation.

This is a proposed rulemaking of agency organization, procedure or practice. This proposed procedural rule would not regulate any person or entity outside the EPA and would not affect the rights or obligations of outside parties. As a rule of Agency procedure, this rule is exempt from the notice and comment requirements set forth in the Administrative Procedure Act. See 5 U.S.C. 553(b)(A). Nonetheless, the Agency voluntarily seeks comment because it believes that the information and opinions supplied by the public will inform the Agency's views.

The D.C. Circuit has explained that ''the critical feature of a rule that satisfies the so-called procedural exception [to the APA's notice and comment requirements] is that it covers agency actions that do not themselves alter the rights or interests of parties . . . .'' *James A. Hurson Assocs.* v. *Glickman,* 229 F.3d 277, 280 (D.C. Cir. 2000); *National Mining Association* v. *McCarthy,* 758 F.3d 243 (D.C. Cir. 2014) (holding that EPA's interagency plan for enhanced consultation and coordination is a procedural rule because it does not alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the Agency); *Batterton* v. *Marshall,* 648 F.2d 708 (D.C. Cir. 1980) (''The critical question is whether the agency action jeopardizes the rights and interests of parties.''). This rule would not regulate the conduct or determine the rights of any entity outside the federal government.

*C. What action is the Agency Taking?*

This proposed action consists of three elements. First, the proposed regulation provides that the EPA will prepare a BCA for all future significant proposed and final regulations under the CAA. Second, the EPA proposes that the BCA be developed using the best available scientific information and in accordance with best practices from the economic, engineering, physical, and biological sciences. Third, the EPA proposes additional procedural requirements to increase transparency in the presentation of the BCA results, while maintaining the standard practices of measuring net benefits consistent with E.O. 12866. Together, these requirements would help ensure that the EPA implements its statutory obligations under the CAA in a way that is consistent and transparent. In this document, the EPA solicits comment on all aspects of this proposal and how it can best be implemented in accordance with existing law and prior statements of policy that have called for increasing consistency and transparency. Each of the key elements of the action is discussed in more detail below, followed by a summary of specific solicitations for comment.

## III. Background

As the EPA works to advance its mission of protecting public health and the environment, it seeks to ensure that its analyses of regulatory decisions provided to the public continue to be rooted in sound, transparent and consistent approaches to evaluating benefits and costs.

The Supreme Court noted in *Michigan* v. *EPA* that ''[c]onsideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages and the disadvantages of agency decisions.'' *Michigan* v. *EPA,* 135 U.S. 2699, 2707 (2015). Many environmental statutes, including the CAA, contemplate the consideration of costs as part of regulatory decision-making in many instances. Several of these statutes, including the CAA, contain provisions that explicitly require some form of cost consideration when establishing a standard. Additionally, several other provisions use terminology that in context implicitly direct the EPA to consider costs, alone or in conjunction with benefits and other factors. For example, section 112(n)(1)(A) of the CAA directs the Administrator to ''regulate electric utility steam generating units under [section 112], if the Administrator finds such regulation is appropriate and necessary.'' ''Read naturally in the present context, the phrase 'appropriate and necessary' requires at least some attention to cost.'' *Michigan,* 135 S. Ct. at 2707 (2015). Therefore, in light of the varying statutory provisions in the CAA that apply to or otherwise address cost consideration, the Agency proposes to provide analysis to the public that will present all of the benefits and costs in a consistent manner for all significant CAA rulemakings.

Thorough and careful economic analysis is informative for developing sound environmental policies. High quality economic analyses enhance the effectiveness of environmental policy decisions by providing policy makers and the public with information needed to systematically assess the likely consequences of various actions or options. BCA, a type of economic analysis, can serve an integral informative role in the regulatory development process. In general terms, a BCA is an evaluation of both the benefits and costs to society as a result of a policy and the difference between the two (*i.e.,* the calculation of net benefits (benefits minus costs)). It provides information about whether a

policy change has the potential to improve the aggregate well-being of society.

The usefulness of BCA in informing the development of environmental regulations has been recognized both within and outside government for decades. As discussed below, Presidential Executive Orders and statutes have been in place for decades formally requiring the preparation of BCA in the development of major Federal regulations, and the courts have examined the use of BCA in several regulatory contexts. In addition, the usefulness of formal BCA in informing regulatory policy debates on protecting and improving public health, safety, and the natural environment has been emphasized in the academic literature. For example, as explained in seminal work by prominent economists Arrow et al. (1996a, 1996b), BCA ''can provide an exceptionally useful framework for consistently organizing disparate information, and in this way, it can greatly improve the process and, hence, the outcome of policy analysis. If properly done, BCA can be of great help to agencies participating in the development of environmental regulations . . .'' (1996b). Arrow et al. recommend that ''Benefit-cost analysis should be required for all major regulatory decisions,'' and that ''the precise definition of 'major' requires judgment.''

Benefit-cost analyses have been an integral part of executive branch rulemaking for decades. Presidents since the 1970s have issued executive orders requiring agencies to conduct analysis of the economic consequences of regulations as part of the rulemaking development process. President Ford's 1974 Executive Order (E.O.) 11821 required government agencies to prepare inflation impact statements before issuing major regulations.[1] These inflation impact statements essentially turned into benefit-cost analyses based on the understanding that a regulation would not be truly inflationary unless its costs to society exceeded the benefits it produced,[2] and the E.O. was renamed as *Economic Impact Statements* with E.O. 11949 in 1976.[3] President Carter's 1978 E.O. 12044, *Improving Government Regulations,* included formal requirements for conducting regulatory analysis at a minimum ''for all regulations which will result in (a) an annual effect on the economy of $100 million or more; or (b) a major increase in costs or prices for individual industries, levels of government or geographic regions.'' [4] Regulatory analyses under E.O. 12044 were required to contain ''a succinct statement of the problem; a description of the major alternative ways of dealing with the problem that were considered by the agency; an analysis of the economic consequences of each of these alternatives and a detailed explanation of the reasons for choosing one alternative over the others.''

In 1981, President Reagan issued E.O. 12291, *Federal Regulation,* which imposed the first requirements for conducting formal benefit-cost analysis in the development of new major Federal regulations. Among its provisions, it explicitly required that: ''(a) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action; (b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society; (c) Regulatory objectives shall be chosen to maximize the net benefits to society; (d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and (e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.'' Under E.O. 12291, major regulations included ''any regulation that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.'' [5]

In 1993, E.O. 12291 was revoked and replaced by President Clinton's E.O. 12866, *Regulatory Planning and Review,* which is still in effect today. E.O. 12866 requires that for all significant regulatory actions pursuant to Section 3(f), an agency provide ''an assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate . . .'' For regulatory actions meeting criteria listed under Section 3(f)(1)—that is, any regulatory action that is ''likely to result in a rule that may . . . have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities''—E.O. 12866 further requires that this assessment include a quantification of benefits and costs to the extent feasible. In addition, E.O. 12866 states that, to the extent permitted by law, agencies ''should assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs''; ''in choosing among alternative regulatory approaches . . . should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach''; and that ''[e]ach agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.''

In 1995, the Unfunded Mandates Reform Act of 1995 (UMRA) included analytical requirements for all regulatory actions that include federal mandates ''that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.'' An action contains a federal mandate if it imposes an enforceable duty on state, local or tribal governments, or the private sector. The analytical requirements under UMRA are similar to the analytical requirements under E.O. 12866, and thus the same analysis may permit

[1] Executive Order 11821 — Inflation Impact Statements, **Federal Register**, Vol. 39, No. 231—Friday, November 29, 1974 (pages 41501–41502).

[2] *https://obamawhitehouse.archives.gov/omb/inforeg_chap1#tnfrp.*

[3] Executive Order 11949—Economic Impact Statements, **Federal Register**, Vol. 42, No. 3—Wednesday, January 5, 1977 (page 1017). *https://www.govinfo.gov/content/pkg/FR-1977-01-05/pdf/FR-1977-01-05.pdf.*

[4] Executive Order 12044—Improving Government Regulations, **Federal Register**, Vol. 43, No. 58—Friday, March 24, 1978 (pages 12659–12670).

[5] *https://www.archives.gov/federal-register/codification/executive-order/12291.html.*

compliance with both analytical requirements.

More recent Executive Orders also reaffirm the requirements and principles in E.O. 12866. The former Administration's E.O. 13563, issued in 2011 and also still in effect today, reaffirms the requirements and other principles and definitions in E.O. 12866 and embraces benefit-cost analysis: ''In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' [6] More recently, this Administration's E.O. 13777, issued in 2017, directs agencies to identify regulations that ''impose costs that exceed benefits.'' [7] E.O. 13783, also issued in 2017, similarly reaffirms the importance of benefit-cost analysis: ''In order to ensure sound regulatory decision making, it is essential that agencies use estimates of costs and benefits in their regulatory analyses that are based on the best available science and economics.'' [8]

The Office of Management and Budget's (OMB's) *Circular A–4* (OMB 2003), which remains in effect today, provides guidance to Federal agencies on the development of regulatory analysis as required under E.O. 12866 and a variety of related authorities.[9] In developing Circular A–4, OMB first developed a draft that was subject to public comment, interagency review, and external peer review. As summarized in E.O. 13783, ''. . . OMB Circular A–4 . . . was issued after peer review and public comment and has been widely accepted for more than a decade as embodying the best practices for conducting regulatory cost-benefit analysis.'' [10] The document encourages transparency in practices, including the expression of costs and benefits in monetary units that allow for the evaluation of ''incremental benefits and costs of successively more stringent regulatory alternatives'' such that an agency can ''maximize net benefits.'' [11]

EPA's *Guidelines for Preparing Economic Analyses* (hereafter, the *Guidelines*) [12] complements Circular A–4 by providing the Agency with more detailed peer-reviewed guidance on how to conduct BCA and other types of economic analyses for both environmental regulatory actions and non-regulatory management strategies, with the intent of improving compliance with E.O. 12866 and other executive orders and statutory requirements (*e.g.,* Small Business Regulatory Enforcement Fairness Act of 1996 provisions). The *Guidelines* are updated periodically—building on work issued in 1983 (then titled *Guidelines for Performing Regulatory Impact Analysis*), 2000, and most recently in 2010—to account for growth and development of economic tools and practices. The *Guidelines* establish a scientific framework for analyzing the benefits, costs, and other economic impacts of regulations and policies, including assessing the distribution of costs and benefits among various segments of the population. In addition to presenting the well-established scientific foundations for economic analysis, they incorporate recent advances in theoretical and applied work in the field of environmental economics. Updates of the Guidelines are led by the EPA's National Center for Environmental Economics (NCEE) in consultation with economists from across the Agency and OMB. All chapters undergo an external peer review, either through EPA's Science Advisory Board or through independent reviews by external experts, prior to be being finalized.[13]

Given the history described above pertaining to the use of BCA by executive agencies, and given that several statutes, including the CAA, include provisions that require some form of cost consideration, the federal courts have also developed significant case law regarding regulatory cost consideration and the usefulness of BCA. This case law addresses when, and if, such use is required or permissible and how it may be employed in reasoned decision-making. As a general matter, while certain statutory provisions may prohibit reliance on BCA or other methods of cost consideration in decision making,[14] such provisions do not preclude the Agency from providing additional information regarding a proposed or final rule to the public. For example, while the CAA prohibits the EPA from considering cost when establishing requisite National Ambient Air Quality Standards (NAAQS) for criteria pollutants,[15] the EPA nonetheless provides Regulatory Impact Analyses (RIAs) [16] to the public for these rulemakings.[17] The agency believes that the information provided as a result of the procedural requirements of this proposal, if finalized, would increase transparency and consistency across CAA rulemakings; would provide the public with additional information in the CAA rulemaking process; and would provide the Agency with supplemental information for potential use by the Agency when it is appropriate to be considered. Whether the Agency utilizes any information produced as a result of these procedural requirements would be determined by the statutes and regulations governing particular subsequent rulemakings. Any such information would be in addition to the information provided by other methodologies and analyses as directed by specific CAA statutes and regulations.

The Supreme Court has held that agencies may conduct and consider a BCA even when a statute does not explicitly require one. In *Entergy Corp.* v. *Riverkeeper, Inc.,* 556 U.S. 208, 222–224 (2009), the Supreme Court clarified that neither *American Textile Mfrs. Inst.* v. *Donovan,* 452 U.S. 490 (1981) (*American Textile Mfrs.*) nor *Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001) (*American Trucking*), stands for the broad proposition that statutory silence in regard to BCA always implies prohibition of BCA. Concluding that the EPA is permitted to use BCA in determining the content of regulations promulgated under Clean Water Act section 1326(b). The Court reasoned

[6] *https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review.*

[7] Enforcing the Regulatory Reform Agenda (82 FR 12285, March 1, 2017).

[8] *https://www.govinfo.gov/content/pkg/FR-2017-03-31/pdf/2017-06576.pdf.*

[9] *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/. Circular A–4 refines and replaces OMB's* ''*best practices*'' *document of 1996, which was issued as a guidance in 2000 and reaffirmed in 2001. All these versions of the 1996 document were superseded by Circular A–4.*

[10] *https://www.govinfo.gov/content/pkg/FR-2017-03-31/pdf/2017-06576.pdf.*

[11] *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.*

[12] *https://www.epa.gov/environmental-economics/guidelines-preparing-economic-analyses.*

[13] The EPA is in the process of a periodic update of the Guidelines. The EPA anticipates that among the changes within this update, the current Section 9.2.3.3, ''Impacts on employment'', will be replaced with a discussion based on more recent literature and feedback from the Economy Wide Modeling Science Advisory Board Panel. For more details regarding Chapter 9, see: *https://www.epa.gov/sites/production/files/2017-09/documents/ee-0568-09.pdf.* For more details regarding the update of the Guidelines in general, see: *https://yosemite.epa.gov/sab/sabproduct.nsf//LookupWebProjectsCurrentBOARD/30D5E59E8DC91C2285258403006EEE00?OpenDocument.*

[14] See, *e.g., Whitman* v. *Am. Trucking Ass'ns,* 531 U.S. 457 (2001) (holding that Section 109(b) of the CAA unambiguously barred cost considerations when setting the National Ambient Air Quality Standards.

[15] Id.

[16] A regulatory impact analysis, or ''regulatory analysis'' for brevity, as prepared under E.O. 12866, consists of a benefit-cost analysis and any related cost-effectiveness analyses and assessments of economic and distributional impacts (OMB 2003).

[17] *See, e.g.,* U.S. EPA, Regulatory Impact Analysis of the Proposed Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone (2014), *https://www3.epa.gov/ttn/ecas/regdata/RIAs/20141125ria.pdf.*

''that [CWA] § 1326(b)'s silence is meant to convey nothing more than a refusal to tie the agency's hands as to whether cost-benefit analysis should be used, and if so to what degree.'' *Id.* at 222; *see also id.* at 212, 219–20, 226.

The Supreme Court noted that its decisions in *American Trucking and American Textile Mfrs.* ''do not undermine this conclusion.'' 556 U.S. at 223. The Court highlighted that in *American Trucking,* it had held that the text of section 109 of the Clean Air Act, ''interpreted in its statutory and historical context . . . unambiguously bars cost considerations'' when air quality standards are set pursuant to that provision. *American Trucking,* 531 U.S. at 471, *quoted in Entergy Corp.,* 556 U.S. at 223. The *Entergy Corp.* Court further elaborated that ''[t]he relevant 'statutory context' [in *American Trucking*] included other provisions in the [CAA] that expressly authorized consideration of costs, whereas § 109 did not.'' 556 U.S. at 233. The Court concluded that *American Trucking* ''stands for the rather unremarkable proposition that sometimes statutory silence, when viewed in context, is best interpreted as limiting agency discretion.'' 556 U.S. at 223. The Court further noted that in *American Textile,* the Court had relied, in part, on the absence of mention of BCA in the statute to hold that the agency was not required to conduct a BCA when setting certain health and safety standards. 556 U.S. at 223. ''[U]nder *Chevron,* that an agency is not required to [engage in cost-benefit analysis] does not mean that an agency is not *permitted* to do so.'' *Id.* Thus, the Supreme Court has confirmed that a statute need not have explicitly required that the agency conduct a BCA in its decision-making process for the agency to do so.

The Supreme Court additionally acknowledged in *Entergy Corp.* that ''whether it is 'reasonable' to bear a particular cost may well depend on the resulting benefits.'' 556 U.S. at 225–226. This concept was further elaborated upon by the Court in *Michigan* v. *EPA,* which held, in the context of the term ''appropriate and necessary'' contained in Section 112(n)(1)(A) of the CAA, that the term required consideration of cost. 135 S. Ct. 2699, 2706 (2015). In doing so, the Supreme Court stated that ''[o]ne would not say that it is even rational, never mind 'appropriate,' to impose billions of dollars in economic costs in return for a few dollars in health or environmental benefits'', concluding that ''[n]o regulation is 'appropriate' if it does significantly more harm than good.'' *Id.* at 2707. The D.C. Circuit recently echoed this concept in *Mingo Logan Coal Co.* v. *EPA.* While the D.C. Circuit panel ultimately concluded that the cost issue had been forfeited by petitioners, in response to then Judge Kavanaugh's dissent which argued that cost consideration should be required, the panel stated, ''[i]ndeed, we do not quibble with his general premise—and that of the many legal luminaries he cites—that an agency should generally weigh the costs of its action against its benefits.'' 829 F.3d 710, 723 (D.C. Cir. 2016). In general, when cost consideration is either required or permitted by the CAA, the courts have not mandated a specific type of cost consideration but have granted the Agency broad discretion in determining its methodology. *Michigan,* 135 S. Ct. at 2711 (''We need not and do not hold that the law unambiguously required the Agency, when making this preliminary estimate, to conduct a formal cost-benefit analysis in which each advantage and disadvantage is assigned a monetary value. It will be up to the Agency to decide (as always, within the limits of reasonable interpretation) how to account for cost.''); *see also Sierra Club* v. *Costle,* 657 F.2d 298, 345 (D.C. Cir. 1981) (''[S]ection 111(a) explicitly instructs the EPA to balance multiple concerns when promulgating a NSPS.''); *id.* at 321 (''The text gives the EPA broad discretion to weigh different factors in setting the standard.''); *Lignite Energy Council* v. *EPA,* 198 F.3d 930, 933 (D.C. Cir. 1999) (''Because section 111 [of the CAA] does not set forth the weight that [should be] assigned to each of these factors, we have granted the agency a great degree of discretion in balancing them''); *Husqvarna AB* v. *EPA,* 254 F.3d 195, 200 (D.C. Cir. 2001) (''Section 213 [of the CAA] . . . simply directs the EPA to consider cost. . . . Because section 213 does not mandate a specific method of cost analysis, we find reasonable the EPA's choice to consider costs on the per ton of emissions removed basis.'').

Additionally, lower courts have noted the usefulness of BCA and have utilized the information provided therein to inform their analysis when reviewing agency regulations. Several of these cases utilize information from agency-created BCAs and/or RIAs as evidence that an agency ignored alternatives or acted in an arbitrary and capricious manner when taking action.

For example, in *Advocates for Highway and Auto Safety* v. *FMCSA,* 429 F.3d. 1136 (D.C. Cir. 2005), the D.C. Circuit relied in part on a BCA in invalidating, as arbitrary and capricious, a final rule promulgated by Federal Motor Carrier Safety Administration (FMCSA) intended to ensure that drivers of commercial motor vehicles received adequate training. In its analysis, the D.C. Circuit highlighted an incongruity between methods of training shown to be effective and the final rule, noting that ''[f]rom a purely economic perspective, the agency's disregard of the Adequacy Report [containing a BCA] is baffling in light of the evidence in the record.'' *Id.* at 1146. The D.C. Circuit pointed to a training regimen that ''according to the agency's own calculations, [would] produce benefits far in excess of costs.'' *Id.* Noting the agency's findings that ''the program's estimated 10–year cost of between $4.19 billion to $4.51 billion would yield a benefit ranging from $5.4 billion to $15.27 billion, depending on analytic assumptions,'' the court concluded that the BCA for the rule ''lends no support to FMCSA's position. In the final rule, FMCSA says practically nothing about the projected benefits.'' *Id.;*

In *Public Citizen, Inc.* v. *Mineta,* 340 F.3d 39 (2nd Cir. 2003), the Second Circuit determined that a National Highway Traffic Safety Administration (NHTSA) rule regarding tire pressure monitoring system (TPMS) requirements was arbitrary and capricious, as the NHTSA BCA showed that alternatives would be safer and more cost-effective. The court stated that it may ''be difficult to weigh economic costs against safety benefits. But the difficulty of the task does not relieve the agency of its obligation to perform it under [certain vehicle safety laws] and State Farm.'' *Id.* at 58 (citing *Motor Vehicles Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983)). The Second Circuit observed that NHTSA ''instead, presents us with a rulemaking record that does not explain why the costs saved were worth the benefits sacrificed.'' *Id.* The court noted that the BCA ''discloses that the added cost for a system that worked all of the time, rather than half of the time, was less than $10 per car, and that the adoption of the four-tire, 25 percent standard alone was the most cost effective means of preventing crashes caused by significantly under-inflated tires.'' *Id.*

Finally, in *NRDC* v. *EPA,* 824 F.2d 1258 (1st Cir. 1987), the First Circuit vacated, in part, and remanded rules for long-term disposal of high-level radioactive waste under Nuclear Waste Policy Act of 1982 based in part on the Agency's selection of a 1,000-year design criterion rather than a longer-term one. The court determined that it was unreasonable agency action to not adopt cheap methods of increasing protections. In doing so, the court

observed that ''[l]ikewise, EPA's Final [RIA] of 40 CFR part 191 demonstrates that more rigorous site selection could produce sites with such impermeable geologic media that compliance with the individual protections for a much longer duration would not even require the extra cost of 'very good' engineered canisters.'' *Id.* at 1289.

With this history in mind as a backdrop and following E.O. 13777 noted above, the EPA is proposing to establish requirements to ensure that the EPA consistently assesses the costs and benefits of significant CAA rules. The EPA opened a public docket [18] in April 2017 to solicit feedback and identify regulations that ''impose costs that exceed benefits.'' Among the public comments received, a large cross-section of stakeholders stated that the agency either underestimated costs, overestimated benefits, or evaluated benefits and costs inconsistently in its rulemakings. Per E.O. 13777 and based on these public comments, the EPA decided to take further action to evaluate opportunities for reform.

In June 2018, the EPA issued an Advance Notice of Proposed Rulemaking (ANPRM), ''Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process'' (83 FR 27524, June 13, 2018), to solicit public input on potential approaches for increasing consistency and transparency in how the EPA considers benefits and costs in the rulemaking process. Informed by the public comments received on that ANPRM, on May 13, 2019, the Administrator issued a memorandum [19] to EPA's Assistant Administrators announcing the intention to propose statute-specific rules that outline how consistency and transparency concepts will be implemented in future rulemakings. The memorandum outlined the following principles for developing these regulatory proposals, consistent with applicable laws and regulations: Ensuring that the Agency balances benefits and costs in regulatory decision-making; increasing consistency in the interpretation of statutory terminology; providing transparency in the weight assigned to various factors in regulatory decisions; and promoting adherence to best practices in conducting the technical analysis used to inform decisions.

This proposed rulemaking is the first statute-specific rulemaking in this effort. The EPA is proposing to codify the procedural requirements governing the development of BCA, including risk assessments used as inputs to the BCA, for significant rulemakings conducted under the CAA, and proposes additional procedural requirements to increase transparency in the presentation of the benefits resulting from significant CAA regulations. Together, these requirements would ensure a consistent approach to the EPA's CAA benefit-cost analyses under the CAA and would provide transparency by requiring the generation of relevant information in all significant rulemakings.

## IV. Rationale and Summary of the Proposed Requirements

### *A. Preparation of Benefit-Cost Analyses for Significant Regulations*

The EPA seeks to codify the practice of preparing BCAs in the development of future significant CAA regulations. Specifically, EPA proposes that all future significant proposed and final regulations promulgated under the Clean Air Act be accompanied by a BCA. The EPA proposes to define a significant regulation as a proposed or final regulation that is determined to be a ''significant regulatory action'' pursuant to E.O. 12866 Section 3(f) or is otherwise designated as significant by the Administrator. Regulations meeting either of these factors are generally those that the EPA anticipates would have the largest annual impact on the economy (*i.e.,* greater than $100 million) as well as those that are important to analyze for other policy reasons. For example, a rule projected to have less than a $100 million annual effect on the economy could disproportionately affect a single industry, population subgroup, or geographic area. Such rules, or ones that are notably novel or significant for other policy reasons, would benefit from rigorous analysis to inform the public and decision makers about the magnitude and disposition of both their benefits and costs on affected entities.

### *B. Best Practices for the Development of Benefit-Cost Analysis*

In response to the ANPRM, the EPA received comments from a wide range of stakeholders emphasizing the importance of conducting BCA in accordance with best practices from the economic, engineering, physical, and biological sciences. One theme raised by some commenters was that there is inadequate adherence to existing EPA and OMB guidance for how to conduct BCA. Some commenters pointed to recent CAA regulatory BCAs conducted pursuant to E.O. 12866 as examples of a lack of transparency or improper analytic assumptions. As one example, some commenters contend that some BCAs have double-counted benefits that arise from another regulation. The EPA agrees that there is a risk of such a misestimation if the pollution concentration levels resulting from existing regulations are not carefully accounted for in the baseline of the analysis. In other words, this type of double-counting can be avoided if the Agency follows the best practices for BCA of correctly specifying the baseline. Several commenters recommended that the EPA issue binding procedural requirements to ensure transparency and consistent adherence to best practices for BCA. This proposed rulemaking seeks to ensure consistent adherence to best practices for BCA of future CAA regulations by codifying these requirements into regulation. The EPA proposes that BCAs for significant proposed and final CAA regulations be developed in accordance with the best available scientific information and best practices from the economic, engineering, physical, and biological sciences. Specifically, the EPA proposes to codify into regulation several best practices for the conduct and presentation of BCA. In addition, the EPA would require that a reasoned explanation be provided for any departures from best practices in the BCA, including a discussion of the likely effect of the departures on the results of the BCA.

The proposed requirements itemized in the following subsections are among the best practices outlined in existing peer-reviewed OMB and EPA guidance documents developed in response to longstanding presidential orders discussed above: OMB's Circular A–4 (2003) and its associated guidance (2010, 2011a, 2011b),[20] EPA's Guidelines for Preparing Economic Analyses (2010). These guidance documents are grounded in the economics literature pertaining to the conduct of BCA. Benefit-cost analysis as a discipline is a branch of applied microeconomic welfare economics and is summarized in numerous textbooks

[18] See EPA, Evaluation of Existing Regulations (82 FR 17793). All public comments are accessible online in our docket on the *Regulations.gov* website identified by Docket ID No. EPA–HQ–OA–2017–0190.

[19] Available at: *https://www.epa.gov/environmental-economics/administrator-wheeler-memorandum-increasing-consistency-and-transparency*.

[20] Office of Management and Budget, U.S., 2003. Circular A–4: Regulatory Analysis. Office of Management and Budget, U.S., 2010. Agency Checklist: Regulatory Impact Analysis. Office of Management and Budget, U.S., 2011a. Circular A–4, ''Regulatory Analysis'' Frequently Asked Questions (FAQs). Office of Management and Budget, U.S., 2011b. Circular A–4, ''Regulatory Impact Analysis: A Primer''.

such as Boardman et al. (2018), Farrow (2018), Brent (2006), Mishan and Quah (2007), and Hanley and Spash (1996).[21] This discipline is applied routinely to environmental economics issues and the theory of BCA and its application can be found in standard environmental economic textbooks such as Phaneuf and Requate (2016) and Perman et al. (2012).[22] Specific lists of best practices and guidance for practitioners can also be found in articles by Robinson and Hammit (2016), Sunstein (2014), Farrow (2013), Farrow and Viscusi (2011), Krutilla (2005), and notably in an article on the principles and standards by Nobel laureate Kenneth Arrow and a number of prominent economists (Arrow et al., 1996).[23]

Since best practices for the conduct of BCA inherently require that the inputs to analysis reflect the best available information,[24] the EPA is also taking the opportunity in this proposal to require that the EPA follow certain best practices regarding the incorporation of information as an input to BCA for significant CAA regulations. In particular, risk assessments often provide key inputs to the development of EPA's health benefit estimates in a BCA, and several commenters recommended that additional consistency and transparency be applied in the assessment of risks leading to the estimation of benefits. Through this rulemaking, the EPA proposes requirements to ensure the consistent and transparent use of risk assessments in BCA of CAA regulations. These proposed requirements include elements that are responsive to recommendations from the National Academies of Sciences, Engineering and Medicine (National Academies) and EPA's Science Advisory Board (SAB) to improve the utility of risk assessment for use in BCAs for CAA regulations. This proposal is also consistent with the 2007 OMB and OSTP Updated Principles for Risk Analysis,[25] which also builds off of the National Academies and SAB recommendations as well as EPA's Risk Characterization Handbook.[26]

*Key elements of a Benefit-Cost Analysis.* The key elements of a rigorous regulatory BCA include: (1) A statement of need; (2) an examination of regulatory options; and (3) to the extent feasible, an assessment of all benefits and costs of these regulatory options relative to the baseline (no action) scenario.

It will not always be possible to express in monetary units all of the important benefits and costs. When it is not, the most efficient alternative will not necessarily be the one with the largest quantified and monetized net-benefit estimate. In such cases, EPA will exercise its subject matter expertise in determining how important the non-quantified benefits or costs may be in the context of the overall analysis. Even when a benefit or cost cannot be expressed in monetary units, EPA will try to measure it in terms of its physical units. If it is not possible to measure the physical units, EPA will describe material benefits or costs qualitatively.

*Statement of Need.* Each regulatory BCA should include a statement of need that provides (1) a clear description of the problem being addressed, (2) the reasons for and significance of any failure of private markets or public institutions causing this problem, and (3) the compelling need for federal government intervention in the market to correct the problem. This statement sets the stage for the subsequent analysis of benefits and costs and allows one to judge whether the problem is being adequately addressed by the policy. Additional discussion of a thorough regulatory statement of need can be found in OMB (1993, B. Introduction, The Need for Federal Regulatory Action) and EPA (2010, Chapter 3).

*Regulatory Options.* The BCA must analyze the benefits and costs of regulatory options, or other notable deviations from the proposed or finalized option. Where there is a continuum of options (such as options that vary in stringency), the BCA must analyze at least three options which accomplish the stated objectives of the Clean Air Act (unless the BCA explains the rationale for analyzing fewer than three options, as further described below) and must explain why they were selected: The proposed or finalized option; a more stringent option that achieves additional benefits (and presumably costs more) beyond those realized by the proposed or finalized option; and a less stringent option that costs less (and presumably generates fewer benefits) than the proposed or finalized option. Even when a continuum of options is not applicable, an analysis of regulatory options provides an opportunity to analyze a variety of parameters including different compliance dates, enforcement methods, standards by size or location of facilities, and regulatory designs (*e.g.,* performance vs. technology standards). If fewer than three options are analyzed, or if there is a continuum of options and the options analyzed do not include at least one more stringent (or otherwise more costly) and one less stringent (or otherwise less costly) option than the proposed or finalized option, then the BCA must explain why it is not appropriate to consider more alternatives. For further discussion, see OMB Circular A–4, E. Identifying and Measuring Benefits and Costs, General Issues, 3. Evaluation of Alternatives.

*Baseline.* The baseline in a BCA serves as a basis of comparison with the regulatory options considered. It is the best assessment of the way the world would look absent the regulatory action. The choice of a baseline requires consideration of a wide range of potential factors, including exogenous changes in the economy that may affect relevant benefits and costs (*e.g.,* changes over time in demographics, economic activity, consumer preferences, and technology); impacts of regulations that have been promulgated by the agency or other government entities; and the degree of compliance by regulated entities with other regulations. Accounting for other existing regulations in the baseline is especially important in order to avoid double counting of the incremental benefits and costs from other existing regulatory actions affecting the same environmental condition (*e.g.,* ambient air quality). When the EPA determines that it is appropriate to consider more than one baseline (*e.g.,* one that

[21] Farrow, S. ed., 2018. Teaching Benefit-Cost Analysis: Tools of the Trade. Edward Elgar Publishing. Brent, R.J. ed., 2004. Applied Cost-Benefit Analysis. Edward Elgar Publishing. Mishan, E.J. and Quah, E., 2007. Cost-benefit analysis. Routledge. Hanley, N. and Spash, C., 1996. Cost benefit analysis and the environment.

[22] Phaneuf, D.J. and Requate, T., 2016. A course in environmental economics: Theory, policy, and practice. Cambridge University Press. Perman, R., Ma, Y., McGilvray, J. and Common, M., 2003. Natural resource and environmental economics. Pearson Education. Krutilla, K., 2005. Using the Kaldor-Hicks tableau format for cost-benefit analysis and policy evaluation. Journal of Policy Analysis and Management: The Journal of the Association for Public Policy Analysis and Management, 24(4), pp.864–875.

[23] Robinson, L.A. and Hammitt, J.K., 2013. Skills of the trade: Valuing health risk reductions in benefit-cost analysis. Journal of Benefit-Cost Analysis, 4(1), pp.107–130. Sunstein, C.R., 2014. The real world of cost-benefit analysis: Thirty-six questions (and almost as many answers). Columbia Law Review, pp.167–211. Farrow, S., 2013. How (not) to lie with benefit-cost analysis. The Economists' Voice, 10(1), pp.45–50. Farrow, S. and Viscusi, W.K., 2011. Towards principles and standards for the benefit-cost analysis of safety. Journal of Benefit-Cost Analysis, 2(3), pp.1–25.

[24] See EPA, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by the Environmental Protection Agency (*https://www.epa.gov/sites/production/files/2019-08/documents/epa-info-quality-guidelines_1.pdf*).

[25] *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2007/m07-24.pdf.*

[26] *https://www.epa.gov/risk/risk-characterization-handbook* (EPA 100–B–00–002, December 2000).

accounts for another EPA regulation being developed at the same time that would affect the same environmental condition), the BCA must provide a reasoned explanation for the baselines used in sensitivity analyses and must identify the key uncertainties in the forecast(s). These proposed requirements for developing a baseline are consistent with best practices as outlined in OMB's Circular A–4 (1993) and EPA's Guidelines (2010).

*Measuring Benefits and Costs.* A BCA evaluates the favorable effects of a policy action and the opportunity costs associated with the action. It addresses the question of whether the benefits from the policy action are sufficient for those who gain to theoretically compensate those burdened such that everyone would be at least as well off as before the policy. In other words, many regulations can be thought of as a requirement to divert resources from activities with a higher net return in private markets alone to those with a higher net return when all impacts are counted, thus the calculation of net benefits (benefits minus costs) helps ascertain the economic efficiency of a regulation.

In keeping with best practices, the appropriate measures of benefits and costs to use in a regulatory BCA are social benefits and social costs. When assessing a regulation, the social benefits are the society-wide positive changes in well-being, and social costs are the society-wide opportunities foregone, or reductions in well-being. Willingness to pay (WTP) is the correct measure of these changes in BCA.[27] WTP provides a full accounting of an individual's preference for an outcome by identifying what the individual would give up to attain that outcome. WTP is measured in monetary terms to allow a comparison of benefits to costs in the net benefit calculation. If the BCA departs from these best practices (*e.g.,* where WTP is hard to measure), it must include a robust explanation for doing so. For further discussion, see OMB Circular A–4, E. Identifying and Measuring Benefits and Costs, General Issues, 2. Developing a Baseline and Guidelines (2010/2014), Chapter 5. Baseline.

While based on the same underlying conceptual framework, social benefits and social costs are often evaluated separately due to practical considerations. The social benefits of reduced pollution are often attributable to changes in outcomes not exchanged in markets, such as improvements in public health or ecosystems. In contrast, the social costs generally are measured through changes in outcomes that are exchanged in markets. As a result, different techniques are used to estimate social benefits and social costs however, in both cases the goal is to estimate measures of WTP to provide consistency.

*Methods for Estimating Benefits and Costs.* Although the most appropriate methods for estimating social costs and social benefits can often be regulation-specific, there are best practices for selecting these methods. The EPA proposes that all BCAs will rely on such best practices and will provide reasoned explanations for methods selected. These best practices include the use of a framework that is appropriate for the characteristics of the regulation being evaluated. As discussed in OMB Circular A–4, a good regulatory analysis cannot be developed according to a formula. Conducting high-quality analysis requires competent professional judgment. Different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions. For example, the extent to which compliance cost is a sufficient measure of social costs will depend on whether a regulation is expected to result in changes in prices and quantities within and across markets. Other considerations when selecting an estimation method include the ability of an estimation approach to capture certain types of costs, to adequately reflect the geographic and sectoral detail and scope of the rule, and to reflect how costs may change over time, among other considerations.

During the estimation process, analysts must consider how social cost and benefit endpoints may be affected by behaviors in the baseline and potential behavioral changes from the policy. For example, three broad frameworks for estimating social cost—compliance cost, partial equilibrium, and general equilibrium—offer different scopes in terms of the degree to which behavioral response and other market imperfections are included. In general, analysts can improve the accuracy of cost estimates by reducing known biases due to the omission of potentially important behavioral responses or missing opportunity costs. However, adopting more complex approaches can reduce the precision of estimates due to data and modeling limitations. A compliance cost approach typically identifies the private expenditures associated with compliance in the regulated sector(s). Compliance cost estimates typically exclude behavioral responses outside of the choice of compliance activity and may, therefore, not capture some opportunity costs associated with regulations. However, with adequate data, this approach can generate highly detailed and relatively precise information on compliance options and costs, reflecting the heterogeneity of regulated entities. This can provide a reasonable estimate of the social cost of a regulation when changes in the regulated sector's outputs and input mix are expected to be minimal and no large market effects are anticipated. A partial equilibrium analysis captures supply and demand responses in the regulated sector due to compliance activities and may, therefore, provide a more complete estimate of compliance costs in addition to any lost profits and consumer welfare due to reductions in output. In other words, behavioral responses can have important impacts on both the size and distribution of benefits and costs, and therefore can provide a fuller picture of the social impact of a particular regulation. Partial equilibrium analyses may be extended to consider a small number of related sectors in addition to those directly regulated (*e.g.,* upstream markets that supply intermediate goods to the regulated sector, or markets for substitute or complementary products). A partial equilibrium approach is preferred for estimating social cost when the regulation will result in appreciable behavioral change, but the effects will be confined primarily to a single market or a small number of markets. When broader economy-wide impacts are expected as a result of the regulation, a partial equilibrium approach will miss these effects. In this case, a general equilibrium approach may be more appropriate to more adequately estimate social cost.

A general equilibrium approach, which captures linkages between markets across the entire economy, is most likely to add value when both relevant relationships among sectors

[27] Willingness to pay means the largest amount of money that an individual or group would pay to receive the benefits (or avoid the damages) resulting from a policy change, without being made worse off. The principle of WTP captures the notion of opportunity cost by measuring what individuals are willing to forgo to enjoy a particular benefit. In general, economists tend to view WTP as the most appropriate measure of opportunity cost, but an individual's ''willingness-to-accept'' (WTA) compensation for not receiving the improvement can also provide a valid measure of opportunity cost. WTP is generally considered to be more readily measurable. Market prices provide rich data for estimating benefits and costs based on WTP if the goods and services affected by the regulation are traded in well-functioning competitive markets. See Hanley and Spash (1993), Freeman (2003), Just et al. (2005), and Appendix A of the Guidelines (2010/14).

and pre-existing market distortions are expected to be significant. Market distortions are factors such as pre-existing taxes, externalities, regulations, or imperfectly competitive markets that move consumers or firms away from what would occur in the absence of such distortions. For example, when an environmental regulation affects the real wage such that individuals opt to work fewer hours, it can exacerbate pre-existing inefficiencies in the labor market due to taxes, regulatory barriers, or other market imperfections. This represents a welfare cost not captured by compliance cost estimates. The impacts of a regulation also may interact with pre-existing distortions in other markets, which may cause additional impacts on welfare either positively or negatively. In cases such as these, a general equilibrium approach may be capable of identifying how the costs of complying with a regulation flow through the economy, such as through changes in substitution among factors of production, trade patterns, and demand for goods and services. These effects are partially or wholly missed by compliance cost and partial equilibrium approaches. For further discussion, see Guidelines (2010/2014), Chapter 8, Analyzing Costs, 8.1. The Economics of Social Cost.

The estimated social benefits reported in a BCA should link regulatory requirements to the value that individuals place on the beneficial outcomes,[28] or benefit endpoints, that can be meaningfully expected as a result of those requirements. Benefits assessment is, therefore, typically a multi-step process. The starting point is identifying the changes in environmental contaminants or stressors that are likely to result from policy options relative to the baseline. These changes are often characterized through air quality modeling. The next step is to identify the benefit endpoints that may be affected by changes in environmental quality, such as human health improvements, ecological improvements, aesthetic improvements, and reduced materials damages. The EPA recognizes that the strength of scientific evidence for different health or environmental endpoints varies, and that strength of scientific evidence should be strongest when the benefits are estimated. As further discussed in OMB's M 19–15, this concept is referred to as ''fitness for purpose,'' whereby information anticipated to have a higher impact must be held to higher standards of quality.[29]

The EPA proposes to select the endpoints for which the scientific evidence indicates there is (a) a clear causal or likely causal relationship between pollutant exposure and effect, and subsequently, (b) an anticipated change in that effect in response to changes in environmental quality or exposures is expected as a result of the regulation under analysis. EPA takes comment on an alternative, approach that would select all endpoints for which there is a positive WTP conditional on the available scientific literature.

Once benefit endpoints are identified, decisions must be made about whether and how to quantify changes in each endpoint. From among the endpoints identified above, the EPA proposes to quantify effects for endpoints which scientific evidence is robust enough to support such quantification. If the Agency determines that some benefits should be discussed only qualitatively, for example, due to limited scientific evidence or limited resources for developing concentration response functions, the Agency must provide a reasoned explanation for that decision. Additional information on choosing and quantifying health endpoints is described further below.

Quantification is then followed by valuation of these endpoints when data and methods allow. There are well-defined economic principles and well-established economic methods for valuation as detailed in OMB and Agency guidance, including Circular A–4 and the EPA Guidelines for Preparing Economic Analyses. Finally, the valued endpoints should be aggregated to the extent possible and supported by scientific and economic practice to provide the basis for characterizing the benefits of each policy option.

In some instances, it may be possible to value bundles of attributes or endpoints using reduced-form techniques, such as the hedonic property method. Care and professional judgment are necessary in determining the appropriateness of bundling of several endpoints versus modeling separate endpoints. Even if bundling is thought to be appropriate, it can be useful to think through the multi-step process above conceptually to: (a) Assess whether there are benefit endpoints not reflected in the reduced form valuation estimate that should be included through additional analysis, or (b) compare the magnitudes of multi-step and reduced-form, revealed-preference benefits estimates so that each can provide a check on the reliability of the other.

In summary, the EPA proposes that, to the extent supported by the scientific criteria, as discussed above, as well as practicable in a given rulemaking, (1) BCAs will quantify all benefits; (2) BCAs will monetize all the benefits by following well-defined economic principles using well-established economic methods; and (3) BCAs will qualitatively characterize benefits that cannot be quantified or monetized. In addition, the EPA proposes that the Agency must explain any departure from the best practices for the BCA described in Circular A–4; this includes discussing the likely effect of the departures on the size of the benefits estimate. More discussion of these best practices and estimation methods is provided in Circular A–4 and EPA's Guidelines for Preparing Economic Analyses, and the literature cited therein.

*Quantifying Health Endpoints in a BCA:* Decisions about whether and which changes in the health endpoints should be quantified should be informed by the Agency's evaluation of the relevant scientific literature establishing a link between chemical exposure and health endpoint and the nature of the concentration-response function (*i.e.,* the amount of change in the frequency or severity of the health endpoint expected as the distribution of air quality changes.) In its evaluation, the Agency should explicitly state when scientific judgments or assumptions were used and their effect on the concentration-response function, if known. The Agency would select among concentration-response relationships from studies that satisfied the following minimum standards: (1) The study was externally and independently peer-reviewed consistent with Federal guidance; (2) the pollutant analyzed in the study matches the pollutant of interest in the regulation; (3) concentration-response functions must be parameterized from scientifically robust studies; and (4) when an epidemiological study is used, further

[28] As a practical matter, the value of any adverse public health or welfare outcomes (sometimes referred to as ''disbenefits'') resulting from the regulatory requirements are usually also included on the benefits side of the ledger in regulatory BCAs, although it is theoretically appropriate to include them on the cost side. Such adverse outcomes could include adverse economic, health, safety, or environmental consequences that occur due to a rule (*e.g.,* adverse safety impacts from vehicle emission standards) and are not already accounted for in the direct cost of the rule.

[29] OMB's M–19–15 refers back to OMB's 2002 *Guidelines, which* characterize a subset of agency information as ''*influential scientific, financial, or statistical information*'' *that is held to higher quality standards.* This is scientific, financial, or statistical information that ''the agency can reasonably determine . . . will have or does have a clear and substantial impact on important public policies or important private sector decisions.''

criteria include: (a) It must assess the influence of confounders; (b) the study location must be appropriately matched to the analysis; and (c) the study population characteristics must be sufficiently similar to those of the analysis. When multiple studies satisfy these criteria, the EPA would characterize multiple concentration-response functions reflecting the full set of studies as a means of providing a broader representation of the effects estimate, including high quality studies that do not find a significant concentration-response relationship.

When selecting multiple concentration-response functions, the Agency would quantify risks using separate concentration-response relationship and, if appropriate, pool, or combine, the results (*e.g.* in a meta-analysis) as means of providing a broader representation of the effects estimate. EPA proposes to require that decisions about the choice of the number of alternative concentration-response functions quantified for each endpoint be based on the extent to which it is technically feasible to quantify alternative concentration-response relationships given the available data and resources. Decisions should also consider the sensitivity of net benefits to the choice of concentration-response function. EPA proposes to present results in a manner that promotes transparency in the assessment process by selecting and clearly identifying concentration-response functions with the strongest scientific evidence, as well as evidence necessary to demonstrate the sensitivity of the choice of the concentration-response function on the magnitude and the uncertainty associated with air pollution-attributable effects.

Once the Agency has identified the concentration-response functions to be used for quantifying the selected health endpoints, the Agency proposes that the BCA, or related technical support document, must characterize:

- The variability in the concentration-response functions across studies and models, including plausible alternatives;
- the assumptions, defaults, and uncertainties, their rationale, and their influence on the resulting estimates;
- the extent to which scientific literature suggests that the nature of the effect may vary across demographic or health characteristics;
- the potential variability of the concentration-response function over the range in concentrations of interest for the given policy;
- the influence of potential confounders on the reported risk coefficient;
- the likelihood that the parameters of the concentration-response differ based on geographic location; and
- attributes that affect the suitability of the study or model for informing a risk assessment, including the age of the air quality data, and the generalizability of the study population.

In cases where existing Agency documents (*e.g.,* an Integrated Science Assessment for criteria pollutants) provide the causal analysis, concentration-response analysis, or the factors indicated above to be included in the BCA, the BCA may reference this synthesis. Evidence from epidemiologic, experimental, and controlled human exposure studies may suggest that certain demographic subgroups are subject to risks that differ from the general population; in these instances, it may be appropriate to select concentration-response relationships that quantify risks among these specific subgroups.

BCA requires a comparison of expected costs and expected benefits, so BCA for CAA regulations must include the determination of expected benefits. When feasible, a probability distribution of risk is appropriate to use when determining the expected benefits for CAA regulations. When it is infeasible to estimate a probability distribution, the EPA proposes that measures of the central tendency of risk be used. Upper-bound risk estimates must not be used unless they are presented in conjunction with lower bound and central tendency estimates.

*Uncertainty Analysis.* For various reasons, including the reason that the future is unpredictable, the benefits and costs of future regulatory options are not known with certainty. BCAs should identify uncertainties underlying the estimation of both benefits and costs and, to the extent feasible, quantitatively analyze those that are most influential. Specifically, the EPA must characterize, preferably quantitatively, sources of uncertainty in the assessment of costs, changes in air quality, assessment of likely changes in health and welfare endpoints, and the valuation of those changes. The EPA must also present benefit and cost estimates in ways that convey their uncertainty. The BCA must include a reasoned explanation for the scope of the uncertainty analysis and must specify specific quantitative or qualitative methods chosen to analyze uncertainties. Quantitative uncertainty analyses may consider both statistical and model uncertainty where the data are sufficient to do so. Furthermore, where data are sufficient to do so, the BCA must consider sources of uncertainty independently as well as jointly. The BCA should also discuss the extent to which qualitatively assessed costs or benefits are characterized by uncertainty.

Where probability distributions for relevant input assumptions are available, characterize significant sources of uncertainty in the assessment, and can be feasibly and credibly combined, the EPA proposes that BCAs characterize how the probability distributions of the relevant input assumption uncertainty would impact the resulting distribution of benefit and cost estimates. The EPA should report probability distributions for each health benefit whenever feasible. In addition to characterizing these distributions of outcomes, it is useful to emphasize summary statistics or figures that can be readily understood and compared to achieve the broadest public understanding of the findings. If this proposed rulemaking is adopted, there will be instances when calculating expected values is not practicable due to data or other limitations. In such instances, the EPA would strive to present a plausible range of benefits and costs. Additional discussion of these best practices related to uncertainty analysis is provided in OMB's Circular A–4, Treatment of Uncertainty, and throughout EPA's Guidelines for Preparing Economic Analyses Guidelines.

*Principle of Transparency.* The EPA proposes that BCA of significant CAA regulations include, at a minimum, a detailed and clear explanation of:

- The overall results of the BCA. The EPA proposes that the benefits, costs, and net benefits of each regulatory option evaluated in the BCA be presented in a manner designed to be objective, comprehensive, and easily understood by the public.
- How the benefits and costs were estimated, including the assumptions made for the analysis. BCAs must include a clear explanation of the models, data, and assumptions used to estimate benefits and costs, and the evaluation and selection process for these analytical decisions. This explanation would also include an explanation of procedures used to select among input parameters for the benefit and cost models. Such an explanation could include methods used to quantify risk and to model the fate and transport of pollutants.
- All non-monetized and non-quantified benefits and costs of the action. BCAs must provide available

evidence on all non-monetized and non-quantified benefits and costs, including why they are not being monetized or quantified and what the potential impact of those benefits and costs might be on the overall results of the BCA.

• The primary sources and potential effects of uncertainty. The BCA must present the results of the assessment of the sources of uncertainty that are likely to have a substantial effect on the results. Any data and models used to analyze uncertainty must be fully identified, and the quality of the available data must be discussed.

Finally, to the extent permitted by law, the EPA proposes to make the information (including data and models) that was used in the development of the BCA publicly available. If the data and models are proprietary, the EPA proposes to make the underlying inputs and assumptions used, primary equations, and methodologies available to the extent permitted by law, while continuing to protect information claimed as confidential business information (CBI), personally identifiable information (PII), and other privileged, non-exempt information.

Additional discussion of these best practices related to transparency is provided in OMB's Circular A–4, Transparency and Reproducibility of Results, and throughout EPA's Guidelines (2010).

### *C. Requirement for Additional Presentations of BCA Results in Rulemakings*

One theme raised by many commenters on the ANPRM was that the EPA does not clearly distinguish benefit categories in its regulatory documents. These commenters stated that EPA's BCAs generally present benefits as an aggregate total, and that insufficient effort is made to clearly distinguish between the public health and welfare benefits attributable to the specific pollution reductions or other environmental quality goals that are targeted by the specific statutory provision or provisions that authorize the regulation, and other welfare effects of the regulation that are not the primary objective of the statutory provision or provisions. For example, some commenters pointed to reports that show that for regulations for which a BCA is available, the majority of the monetized benefits for CAA regulations were attributable to reductions in fine particulate matter ($PM_{2.5}$) even though the regulation did not target $PM_{2.5}$. This issue did not arise with respect to costs in the public comments received on the ANPRM.

While BCA requires a comparison of total social benefits and total social costs, commenters state that this comparison does not transparently communicate and may also create public confusion about the nature and scope of the statutory authority that provides the basis for the regulation, if a disproportionate share of social benefits arise from changes in environmental and other outcomes unrelated or secondary to the statutory objective of the regulation. While the Agency did not receive public comments on the presentation of costs, this principle of transparency would also apply to considerations of cost as contemplated by the statute when in pursuit those environmental benefits.

Following the principle of transparency, the EPA agrees with commenters that when presenting the results of a BCA, it is important to clearly distinguish between the social benefits attributable to the specific pollution reductions or other environmental quality goals that are targeted by the statutory provisions that give rise to the regulation, and other welfare effects. The disaggregation of welfare effects will be important to ensure that the BCA may provide, to the maximum extent feasible, transparency in decision making. These other welfare effects could include both favorable and adverse impacts on societal welfare. Analogous to how a regulation's interactions with existing imperfections or distortions in other markets (*e.g.,* due to pre-existing taxes) could lead to additional social costs, a regulation could ameliorate or exacerbate other pre-existing externalities. For example, more stringent vehicle emissions standards could affect upstream refinery emissions or reduce the marginal cost of driving due to greater fuel efficiency and could lead to an increase in vehicle miles traveled that affects road safety, congestion, and other transport-related externalities.

Other welfare effects could also occur as a direct or indirect result of the compliance approaches used by regulated entities. For example, changes in other environmental contaminants may arise from the regulated sources. Likewise, the use of an abatement technology that reduces the emissions of HAPs into one medium (*e.g.,* air) may change the emissions of another pollutant into the same medium (*e.g.,* coming out of the same smokestack) or cause changes in emissions of pollutants into another medium (*e.g.,* water) by the regulated sources. Changes in other environmental contaminants may also occur as a result of market interactions induced by the regulation. For example, a regulation may cause consumers or firms to substitute away from one commodity towards another, whose increased production may be associated with changes in various environmental contaminants or other externalities.

The welfare effects associated with these changes should be accounted for in a BCA to the extent feasible, as it is the total willingness to pay for all changes induced by a regulation that determines their relative importance in evaluating economic efficiency.

Disaggregating benefits into those targeted and ancillary to the statutory objective of the regulation may cause the EPA to explore whether there may be more efficient, lawful and defensible, or otherwise appropriate ways of obtaining ancillary benefits, as they may be the primary target of an alternative regulation that may more efficiently address such pollutants, through a more flexible regulatory mechanism, better geographic focus, or other factors. This may be relevant when certain benefits are the result of changes in pollutants that the EPA regulates under a different section of the CAA or under another statute.

*Proposed Requirements:* EPA proposes to codify into regulation two presentational requirements for the preamble of all future significant CAA regulations. First, in order to ensure standardized presentation of the summary of the BCA results consistent with E.O. 12866 in CAA rulemakings, the EPA proposes to codify into regulation the requirement to present a summary in the preamble of the overall BCA results, including total costs, benefits, and net benefits. Second, to enhance transparency about the extent to which a rule is achieving its statutory objectives, the EPA proposes, in addition to a clear reporting of the overall results of the BCA, an additional presentation in the preamble of the public health and welfare benefits that pertain to the specific objective (or objectives, as the case may be) of the CAA provision or provisions under which the rule is promulgated. This second presentation would include a listing of the benefit categories arising from the environmental improvement that is targeted by the relevant statutory provision, or provisions and would report the monetized value to society of these benefits. If these benefit categories cannot be monetized, the EPA is proposing that the Agency must report the quantified estimates of these benefits to the extent practicable and must provide a qualitative characterization if they cannot be quantified. Similarly, if the statute directs or allows the Agency to consider

costs, the EPA proposes to also provide a disaggregation of all relevant cost categories to the extent feasible in this section. This proposed requirement would serve as supplement to the BCA that is developed and presented according to best practices as outlined in Section IV.B of this preamble. It does not replace or change any part of the RIA or the section of the preamble that summarizes the BCA results consistent with E.O. 12866. As discussed in Section V of this preamble, the EPA requests comment on alternative ways of increasing transparency about the extent to which a rule is achieving its statutory environmental objective. Finally, the EPA proposes that the presentational requirements described above be provided in the same section of the preamble of future CAA significant rulemakings.

## V. Additional Considerations and Requests for Comment

### *A. Specifying How BCA Results Should Inform Regulatory Decisions*

The EPA is proposing that the Agency undertake a BCA for significant regulations but is not proposing to specify how or whether the results of the BCA should inform significant CAA regulatory decisions. For example, the EPA is not proposing to mandate that a significant CAA regulation be promulgated only when the benefits of the intended action justify its costs. Such a mandate would not be appropriate, for example, for regulations promulgated under provisions of the CAA that have been read by the courts to prohibit the consideration of costs in decision-making. For example, ''[t]he text of § 109(b), interpreted in its statutory and historical context and with appreciation for its importance to the CAA as a whole, unambiguously bars cost considerations from the NAAQS-setting process.'' *Am. Trucking Ass'ns,* 531 U.S. at 471. Thus, such a mandate would be improper for the NAAQS-setting process. There are other CAA provisions, however, that explicitly require the EPA to take costs into consideration in deciding how or whether to regulate. In addition, several provisions do not explicitly use the word ''cost'' but use terminology that implicitly requires or permits cost consideration. For example, terms such as ''reasonable,'' ''appropriate,'' ''necessary,'' or ''feasible'' have been interpreted as allowing for or even requiring the consideration of cost in decision making. Accordingly, when regulating pursuant to a CAA provision that either explicitly or implicitly requires or permits consideration of cost, it may be appropriate, depending on the statutory provision at issue, to consider whether the benefits of a regulation justify the costs in deciding whether or how to regulate.

In this proposal, the EPA solicits comment on how the Agency could take into consideration the results of a BCA in future rulemakings under specific provisions of the CAA. The EPA also solicits comment on approaches for how the results of the BCA could be weighed in future CAA regulatory decisions. For example, the EPA solicits comment on whether and under what circumstances the EPA could or should determine that a future significant CAA regulation be promulgated only when the benefits of the intended action justify its costs. The EPA also solicits comment on whether and under what circumstances the EPA could determine that a future significant CAA regulation be promulgated only when monetized benefits exceed the costs of the action.

### *B. Other Areas of Solicitation for Public Comment*

*Applicability.* EPA is requesting comment on whether this rulemaking should apply only to the subset of CAA significant regulations that are determined to be economically significant, which the EPA could define, consistent with E.O. 12866 Section 3(f)(1) and OMB *Circular A–4,* as those that are likely to have an effect on the economy (benefits, costs or transfers) of $100 million or more in any one year (that is, a consecutive twelve-month period) or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These economically significant regulations are the same set of regulations for which E.O. 12866 requires the preparation of a BCA. The EPA also requests comment on whether the threshold of $100 million in benefits and/or costs in any given year should be adjusted for inflation going forward, and, if so, whether such adjustments should be made assuming a base year of 1995 (as is done with the $100 million expenditure threshold set forth in the Unfunded Mandates Reform Act).The EPA is requesting comment on whether certain elements of the proposed action should consider resource constraints when being implemented for CAA significant regulations, under the reasonable proposition embedded in E.O. 12866 that the intensity of the resources dedicated to an analysis should be coordinated and consistent with the level of impact of a decision.

*Best Practices for the Development of BCA.* The EPA is requesting comment whether it is appropriate to codify best practices for the development of BCA in this rulemaking and, if so, whether specific additional best practices should also be so codified. For example, the EPA solicits comment on whether this rulemaking should specify best practices related to assumptions about technological change and/or learning effects in BCA. The EPA further solicits comment as to whether any additional proposed requirements for BCAs would improve BCA consistency. EPA solicits comments as to whether non-domestic benefits and costs of regulations, when examined, should be reported separately from domestic benefits and costs of such regulations, just as this proposed rulemaking would provide for a separate presentation of benefits limited to those targeted by the relevant statutory provision or provisions.

The EPA is requesting comment as to whether requirements related to risk assessments used in BCAs should be applied more broadly than as described in the proposed rulemaking and, in particular, whether such requirements should apply to all risk assessments used in CAA significant rulemakings. For example, should EPA codify into regulation the proposed selection criteria for selecting among studies characterizing concentration-response relationships and the proposed requirement for synthesizing evidence across the literature? The EPA also solicits comment on whether to impose additional requirements for risk assessments. For example, should the EPA impose requirements for best practices related to any weight-of-evidence (WOE) frameworks that the Agency uses in the developments of CAA significant rulemakings? Should EPA impose additional requirements to ensure consistency and transparency in the assessment of bias and uncertainty in risk analyses (*e.g.,* requirements relating to the use of quantitative bias analysis, or requirements intended for consistency purposes such as requirements relating to the use of probabilistic risk analysis for reducing uncertainty in risk analysis)? The EPA also solicits comments on whether additional requirements within the study selection criteria are necessary to ensure a high-quality and appropriately reliable characterization of air quality and risk.

*Additional Presentational Requirements to Increase Transparency.* EPA requests comment on alternative approaches to increasing transparency about the extent to which a rule is achieving its statutory objectives. In

particular, EPA solicits comment on whether, instead of, or in addition to, the presentational requirements proposed in Section IV.C of this preamble, the EPA should require a detailed disaggregation of both benefit and cost categories within the table that summarizes the overall results of the BCA in the preamble of future significant CAA rulemakings. The goal of this disaggregation would be to clarify what public health and welfare benefits pertain to the specific statutory objective, or objectives, of the CAA provision, or provisions, under which the rule is promulgated, but would allow the reader to see this information in the same location as the estimates of all the other welfare effects, both positive and negative, resulting from the regulation. In addition, the EPA solicits comment on whether the EPA should require a separate presentation of all factors (*e.g.,* particular benefit or cost categories, or other impacts) that are specifically listed as factors that the Administrator must consider in making a regulatory decision pursuant to the statutory provision(s) under which the regulation is being promulgated. This presentation would include a presentation of quantitative results for those factors that have been quantitatively assessed, and a qualitative discussion of any factors that were not quantified.

*Retrospective Analysis.* EPA requests comment on whether EPA should include a requirement for conducting retrospective analysis of significant CAA rulemakings. As discussed in the ANPRM, many previous administrations have periodically undertaken programs of retrospective review or issued executive orders urging agencies to reassess existing regulations and to eliminate, modify, or strengthen those regulations that have become outmoded in light of changed circumstances. But for the most part retrospective review has not become institutionalized practice as has prospective review (such as ex ante benefit-cost analysis conducted under Executive Order 12866) within EPA. The EPA received many comment letters on the ANPRM voicing support for increased retrospective review of Agency rules or programs to be able to evaluate the effectiveness of regulations and to design future improvements to increase efficiency. In this NPRM the EPA requests more specific comments on this issue. In particular, what form should a requirement take in the case of CAA regulations? For example, should the requirement pertain to analysis of an individual rule or a review of the cumulative burden of a set of rules regulating the same or related entities? Should it be applicable to all parts of CAA or just some provisions? What are the advantages and disadvantages of such a requirement? How can the Agency overcome the challenges conducting retrospective analysis in cases where the EPA's ability to collect information about the costs of compliance is limited or otherwise influenced by other statutes?

*Sequence of Rules in Benefit-Cost Analysis.* EPA seeks comment on how sequencing of rules might affect the estimation of benefits and costs.

*Definitions.* The EPA is requesting comment on whether there are additional terms that it should define to increase consistency and transparency in the development of BCA to support CAA rulemaking actions.

*Making Information Public.* The EPA requests comments as to whether the proposed criteria regarding data, assumptions, and study selection reflect the Agency's commitment to be consistent and transparent. The EPA solicits comment on whether this rule should allow the Agency to use models offered by a third party only where the third party makes its models and assumptions publicly available (or allows the EPA to do so) to the extent permitted by law.

## VI. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by the EPA, including documents referenced within the documents that are included in the docket, even if a referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under the **FOR FURTHER INFORMATION CONTACT** section above.

1. U.S. EPA (U.S. Environmental Protection Agency). Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process; Advance notice of proposed rulemaking. (83 FR 27524, June 13, 2018).
2. OMB (Office of Management and Budget). (1996). Economic Analysis of Federal Regulations Under Executive Order 12866.
3. OMB (Office of Management and Budget). (2003). Circular A–4, ''Regulatory Analysis.''
4. U.S. EPA (U.S. Environmental Protection Agency). (2010). Guidelines for Preparing Economic Analyses.
5. Arrow, K., M. Cropper, G. Eads, R. Hahn, L. Lave, R. Noll, P. Portney, M. Russell, R. Schmalensee, V. Smith, and R. Stavins. 1996a. Benefit-Cost Analysis in Environmental, Health, and Safety Regulation: A Statement of Principles. Washington, DC: American Enterprise Institute, The Annapolis Center, and Resources for the Future.
6. Arrow et al. 1996b. Is There a Role for Benefit-Cost Analysis in Environmental, Health, and Safety Regulation? Science 272: 221–222.

## VII. Statutory and Executive Order Reviews

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

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

This proposed action is a significant regulatory action that was submitted to the OMB for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA does not anticipate that this rulemaking will have an economic impact on regulated entities. This is a rule of agency procedure and practice.

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

This proposed action is not expected to be an Executive Order 13771 regulatory action because it relates to ''agency organization, management or personnel.''

### *C. Paperwork Reduction Act (PRA)*

This proposed action does not contain any information collection activities and therefore does not impose an information collection burden under the PRA.

### *D. Regulatory Flexibility Act (RFA)*

I certify that this proposed action would not have a significant economic impact on a substantial number of small entities under the RFA. This action would not impose any requirements on small entities. This action would not regulate any entity outside the federal government.

### *E. Unfunded Mandates Reform Act (UMRA)*

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

### *F. Executive Order 13132: Federalism*

This proposed action does not have federalism implications. It would not

have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This proposed action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

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

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

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

The EPA believes that this proposed action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

**List of Subjects in 40 CFR Part 83**

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

**Andrew Wheeler,**
*Administrator.*

For the reasons set forth in the preamble, EPA is proposing to add 40 CFR part 83 as follows:

## PART 83—INCREASING CONSISTENCY AND TRANSPARENCY IN CONSIDERING BENEFITS AND COSTS IN CLEAN AIR ACT RULEMAKING PROCESS

Sec.



**Authority:** 42 U.S.C. 7601(a)(1)

### Subpart A—Analysis of Air Regulations

#### § 83.1 What definitions apply to this subpart?

*Baseline* means the best assessment of the way the world would look absent the proposed or finalized action.

*Benefit-cost analysis* (BCA) means an evaluation of the favorable effects of a policy action and the opportunity costs, associated with the action. It addresses the question whether the benefits for those who gain from the action are sufficient to, in principle, compensate those burdened such that everyone would be at least as well off as before the policy. The calculation of net benefits (benefits minus costs) helps ascertain the economic efficiency of a regulation.

*Compliance cost* means the private cost that a regulated entity incurs to comply with a regulation (*e.g.,* installation and operation of pollution abatement equipment).

*Data* means the set of recorded factual material commonly accepted in the scientific community as necessary to validate research findings in which obvious errors, such as keystroke or coding errors, have been removed and that is capable of being analyzed by either the original researcher or an independent party.

*Expected value* is a measure of the central tendency of a set of data. It is usually the average or mean of the data. For a variable with a discrete number of outcomes, the expected value is calculated by multiplying each of the possible outcomes by the likelihood that each outcome will occur and then summing all of those values.

*Model* means a simplification of reality that is constructed to gain insights into select attributes of a physical, biological, economic, or social system. A formal representation of the behavior of system processes, often in mathematical or statistical terms. The basis can also be physical or conceptual.

*Opportunity cost* means the value of the next best alternative to a particular activity or resource.

*Publicly available* means lawfully available to the general public from federal, state, or local government records; the internet; widely distributed media; or disclosures to the general public that are required to be made by federal, state, or local law.

*Regulatory options* means, at a minimum:

(1) The proposed or finalized option;

(2) A more stringent option which accomplishes the stated objectives of the Clean Air Act and that achieves additional benefits (and presumably costs more) beyond those realized by the proposed or finalized option; and

(3) A less stringent option which accomplishes the stated objectives of the Clean Air Act and that costs less (and presumably generates fewer benefits) than the proposed or finalized option.

*Sensitivity Analysis* means an analysis that is used to assess how the final results or other aspects of an analysis change as input parameters change, particularly when only point estimates of parameters are available. Typically, a sensitivity analysis measures how a model's output changes as one of the input parameters change. Joint sensitivity analysis (varying more than one parameter at a time) is sometimes useful as well.

*Significant regulation* means a proposed or final regulation that is determined to be a ''significant regulatory action'' pursuant to Section 3(f) E.O. 12866 or is otherwise designated as significant by the Administrator.

*Social benefits, or benefits,* means the positive changes in societal well-being incurred as a result of the regulation or policy action.

*Social costs, or costs,* means the sum of all opportunity costs, or reductions in societal well-being, incurred as a result of the regulation or policy action.

#### § 83.2 How do the provisions of this subpart apply?

(a) The provisions of this subpart apply to benefit-cost analyses (BCA) prepared for all future significant regulations under the Clean Air Act (CAA). Except where explicitly stated otherwise, the provisions of this subpart do not apply to any other type of agency action, including individual party adjudications, enforcement activities, or permit proceedings.

(b) [Reserved]

**§ 83.3 What requirements apply to EPA's preparations of Benefit-Cost Analyses (BCAs) under the Clean Air Act?**

(a) Except as otherwise provided in paragraph (b) of this section, the Agency must develop BCAs of significant CAA regulations in accordance with best available scientific information and best practices from the economic, engineering, physical, and biological sciences, including the following practices.

(1) In preparing the BCA, the Agency must include:

(i) A statement of need;

(ii) An examination of regulatory options; and

(iii) To the extent feasible, an assessment of all benefits and costs of these regulatory options relative to the baseline scenario.

(2) In preparing the BCA, the Agency must include a statement of need that provides: A clear description of the problem being addressed, the reasons for and significance of any failure of by private markets or public institutions causing this problem, and the compelling need for federal government intervention in the market to correct the problem.

(3) In preparing the BCA the Agency must analyze the benefits and costs of regulatory options, as well as the benefits and costs of other notable deviations from the proposed for which the Agency is soliciting comment or the finalized option. Where there is a continuum of options (such as options that vary in stringency), the Agency must analyze at least three regulatory options (as provided in section XX(a)(3)(i)) and explain why these were selected.

If fewer than three options are analyzed, or if there is a continuum of options and the options analyzed do not include at least one more stringent and one less stringent option than the proposed or finalized option, then the Agency must explain why it is not appropriate to analyze more options.

(4) In preparing the BCA, the Agency must use a baseline that appropriately considers relevant factors and relies on transparent and reasonable assumptions. The factors for which the Agency must account in the baseline include, but are not limited to, the following:

(i) Exogenous changes in the economy that may affect benefits and costs (*e.g.,* changes in demographics, economic activity, consumer preferences, or technology);

(ii) Regulations promulgated by the Agency or other government entities; and

(iii) The degree of compliance by regulated entities with other regulations.

In rulemaking actions where the Agency determines it is appropriate to consider more than one baseline (*e.g.,* one that accounts for another EPA regulation being developed at the same time that affects the same environmental condition), the Agency must provide a reasoned explanation for the baselines used and must identify the key uncertainties in the forecast(s).

(5) In preparing the BCA, the Agency must rely on the use of a framework that is appropriate for the characteristics of the regulation being evaluated and must provide an explanation for the approach adopted.

(6) The Agency must consider how costs and benefits may be affected by consumer and producer behavior in the baseline and potential behavioral changes from the policy scenarios.

(7) During the estimation of benefits, the Agency must link regulatory requirements to the value that individuals place on the change in benefit endpoints that can be meaningfully attributed to those requirements. The Agency must select benefit endpoints that the scientific evidence indicates there is:

(i) A clear causal or likely causal relationship between pollutant exposure and effect, and subsequently; and

(ii) An anticipated change in that effect in response to changes in environmental quality or exposures expected as a result of the regulation under analysis. The Agency must quantify effects for endpoints which scientific evidence is robust enough to support such quantification.

(8) The Agency must, to the extent supported by scientific literature as well as practicable in a given rulemaking:

(i) Quantify all benefits;

(ii) Monetize all the benefits by following well-defined economic principles using well-established economic methods; and

(iii) Qualitatively characterize benefits that cannot be quantified or monetized.

(9) When selecting and quantifying health endpoints in a BCA, the Agency must:

(i) Explain the basis for significant judgments, assumptions, data, models, and inferences used or relied upon in the assessment or decision;

(ii) Describe the sources, extent and magnitude of significant uncertainties associated with the assessment;

(iii) When selecting concentration-response relationships from the scientific literature, the Agency must select from studies where each selected study meets the criteria in paragraphs (b)(8)(iii)(A) through (C) of this section.

(A) The study was externally and independently peer-reviewed consistent with Federal guidance;

(B) The pollutant analyzed in the study matches the pollutant of interest in the regulation;

(C) Concentration-response functions must be parameterized from scientifically robust studies;

(D) When an epidemiological study is used further criteria include that the study must assess the influence of confounders, that the study location must be appropriately matched to the analysis, and that the study population characteristics must be sufficiently similar to those of the analysis.

(iv) When multiple studies satisfy these criteria the Agency must characterize multiple concentration-response functions, and, if appropriate, combine them as a means of providing a broader representation of the effect estimate. The Agency would also include studies that meet the criteria above and that do not find a significant concentration-response relationship.

(v) The Agency must base decisions about the choice of the number of alternative concentration-response functions quantified for each endpoint on the extent to which it is technically feasible to quantify alternative concentration-response relationships given the available data and resources.

(vi) The Agency must select and clearly identify concentration-response functions with the strongest scientific evidence, as well as evidence necessary to demonstrate the sensitivity of the choice of the concentration-response function on the magnitude and the uncertainty associated with air pollution-attributable effects.

(vii) Once the Agency has identified the concentration-response functions to be used for quantifying the selected health endpoints, the Agency must characterize, in a BCA or related technical support document:

(A) The variability in the concentration-response functions across studies and models, including plausible alternatives;

(B) The assumptions, defaults, and uncertainties, their rationale, and their influence on the resulting estimates;

(C) The extent to which scientific literature suggests that the nature of the effect may vary across demographic or health characteristics;

(D) The potential variability of the concentration-response function over the range in concentrations of interest for the given policy;

(E) The influence of potential confounders on the reported risk coefficient;

(F) The likelihood that the parameters of the concentration-response differ based on geographic location; and

(G) Attributes that affect the suitability of the study or model for informing a risk assessment, including the age of the air quality data, and the generalizability of the study population.

(viii) When feasible, the Agency must use a probability distribution of risk when determining expected benefits. When it is infeasible to estimate a distribution, the Agency must use measures of the central tendency of risk. Upper-bound risk estimates must not be used unless they are presented in conjunction with lower bound and central tendency estimates.

(10) The Agency must identify uncertainties underlying the estimation of both benefits and costs and, to the extent feasible, quantitatively analyze those that are most influential; and must present benefits and cost estimates in ways that convey their uncertainty. The Agency must provide a reasoned explanation for the scope and specific quantitative or qualitative methods chosen to analyze uncertainties.

(i) To the extent feasible, the Agency must use quantitative methods to analyze uncertainties that have the largest potential effect on benefits or cost estimates.

(ii) The Agency must characterize, preferably quantitatively, sources of uncertainty in the assessment of costs, changes in air quality, assessment of likely changes in health and welfare endpoints, and the valuation of those changes.

(iii) Where data are sufficient to do so, the Agency must consider sources of uncertainty both independently and jointly.

(iv) To the extent feasible, the Agency must also consider, and transparently acknowledge, the extent to which qualitatively-assessed costs or benefits are characterized by uncertainty.

(v) Where probability distributions for relevant input assumptions are available, characterize significant sources of uncertainty in the assessment, and can be feasibly and credibly combined, the Agency must characterize how the probability distributions of the relevant input assumption uncertainty would impact the resulting distribution of benefit and cost estimates.

(vi) Except as provided in this paragraph, the Agency must provide expected-value estimates of benefits and costs as well as distributions about each of the estimates. In cases where estimates based on expected values are not feasible, the Agency must present a plausible range of benefits and costs.

(11) In presenting the results of the BCA the Agency must include the following elements:

(i) The Agency must present the overall results of the BCA (benefits, costs, and net benefits of each regulatory option evaluated in the BCA) in a manner designed to be objective, comprehensive, reproducible to the extent reasonably possible, and easily understood by the public.

(ii) The Agency must describe how the benefits and costs were estimated in the BCA, including the assumptions made for the analysis. The Agency must describe the models, data, and assumptions used to estimate benefits and costs, and the evaluation and selection process for these analytical decisions. The Agency must provide an explanation of procedures used to select among input parameters to the benefit and cost models, and any methods used to quantify risk and to model fate and transport of pollutants.

(iii) Consistent with the best available scientific information, the Agency must discuss non-monetized and non-quantified benefits and costs of the action. The Agency must present available evidence on non-monetized and non-quantified benefits and costs, including explanations as to why they are not being monetized or quantified and discussions of what the potential impact of those benefits and costs might be on the overall results of the BCA.

(iv) The Agency must assess the sources of uncertainty that are likely to have a substantial effect on the results of the BCA and present the results of this assessment. The Agency must identify any data and models used to analyze uncertainty in the BCA, and the quality of the available data shall be discussed.

(12) To the extent permitted by law, the Agency must ensure that all information (including data and models) used in the development of the BCA is publicly available. If the data and models are proprietary, the Agency must make available, to the extent permitted by law, the underlying inputs and assumptions used, equations, and methodologies used by EPA, while continuing to provide appropriate protection for information claimed as confidential business information (CBI), personally identifiable information (PII), and other privileged, non-exempt information.

(b) The Agency must provide a reasoned explanation for any departures from best practices in the BCA, including a discussion of the likely effect of the departures on the results of the BCA.

**§ 83.4 What additional requirements apply to EPA's presentation of BCA results for all significant rules promulgated under the Clean Air Act?**

(a) The Agency must provide, in addition to the reporting of the overall results of the BCA as specified in § __._(a)(11)(i), a summary in the preamble of the overall BCA results, including total costs, benefits, and net benefits.

(b) The Agency must provide an additional presentation in the preamble of the public health and welfare benefits that pertain to the specific objective (or objectives, as the case may be) of the CAA provision or provisions under which the rule is promulgated.

(1)This presentation must list the benefit categories arising from the environmental improvement that is targeted by the relevant statutory provision and report the monetized value to society of these benefits.

(2) If these benefit categories cannot be monetized, the Agency must report the quantified estimates of these benefits to the extent possible and provide a qualitative characterization if they cannot be quantified.

(c) When the CAA provision or provisions under which the rule is promulgated contemplate the consideration of specific costs, the Agency must provide a transparent presentation of how those specific costs relate to total costs, to the extent possible.

(d) The presentations specified in paragraphs (a), (b), and (c) of this section must be placed in the same section in the preamble of the regulation.

[FR Doc. 2020–12535 Filed 6–10–20; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WT Docket Nos. 18–122; Report No. 3149; FRS 16834 ]**

### Petitions for Reconsideration of Action in Proceedings

**AGENCY:** Federal Communications Commission.

**ACTION:** Petitions for Reconsideration.

**SUMMARY:** Petitions for Reconsideration (Petitions) have been filed in the Commission's proceeding by David Silver, on behalf of Aerospace Industries Association et al., Howard J. Symons, on behalf of Charter Communications Inc., Laura H. Phillips, on behalf of Intelsat License LLC, Patrick Masambu, on behalf of International

Telecommunications Satellite Organization, Carlos M. Nalda, on behalf of Eutelsat S.A. and Edward A. Yorkgitis, Jr., on behalf of Raytheon Technologies Corporation.

**DATES:** Oppositions to the Petitions must be filed on or before June 26, 2020. Replies to an opposition must be filed on or before July 6, 2020.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Susan Mort, Wireless Telecommunications Bureau, (202) 418–2429.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document, Report No. 3149, released May 28, 2020. Petitions may be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/*. The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. because no rules are being adopted by the Commission.

*Subject:* Expanding Flexible Use of the 3.7–4.2 GHz Band, FCC 20–20, published at 85 FR 22804, April 23, 2020 in GN Docket No. 18–122. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

*Number of petitions filed:* 6.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2020–12634 Filed 6–10–20; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 36

**[Docket No. FWS–R7–NWRS–2017–0058; FXRS12610700000–189–FF07R00000]**

**RIN 1018–BC74**

## Refuge-Specific Regulations; Public Use; Kenai National Wildlife Refuge

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service, we) proposes to amend its refuge-specific regulations on Kenai National Wildlife Refuge (NWR) to allow State-regulated trapping, harvest of brown bears over bait, discharge of firearms along the Kenai and Russian Rivers during certain times of the year in accordance with State law, increased access for the public using bicycles and game carts, and the use of snowmobiles, all-terrain vehicles, and utility task vehicles on certain lakes when there is adequate snow and ice cover. The purpose of this proposed rule is to align public use regulations on Kenai NWR with State of Alaska regulations, align Service and State management of fish and wildlife to the extent practicable and consistent with Federal law, enhance consistency with harvest regulations on adjacent non-Federal lands and waters, and increase access to Federal lands in furtherance of Secretarial Orders 3347 and 3356.

**DATES:** We must receive your comments on the proposed rule or the associated draft environmental assessment on or before August 10, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

**ADDRESSES:**

*Comment submission:* You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R7–NWRS–2017–0058, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''
- *By hard copy:* Submit your comments by U.S. mail to: Public Comments Processing, Attn: FWS–R7–NWRS–2017–0058, U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see Public Participation and Public Availability of Comments, below, for more information).

*Availability of documents:* To view supporting documents, including the draft environmental assessment and comments received on this proposed rule, go to *http://www.regulations.gov* and search for Docket No. FWS–R7–NWRS–2017–0058.

**FOR FURTHER INFORMATION CONTACT:** Brian Glaspell, Alaska National Wildlife Refuge Chief, Alaska Regional Office, 1011 East Tudor Road, Anchorage, AK 99503; telephone: (907–786–3584).

**SUPPLEMENTARY INFORMATION:**

### Background

This proposed rule addresses interests raised by the State of Alaska regarding the management of Alaska National Wildlife Refuges. Federal regulations regarding these refuges are found in title 50 of the Code of Federal Regulations at part 36.

Specifically, this proposed rule considers changes to public use regulations for Kenai NWR. The proposed regulatory changes relate to allowing the harvest of brown bears at registered bait stations, allowing for trapping under State law without a Federal permit, allowing the discharge of firearms along the Kenai and Russian Rivers at certain times of year, increasing access by bicycles and game carts, and allowing snowmobiles, all-terrain vehicles, and utility task vehicles on certain lakes when there is adequate snow and ice cover.

Refuge management is governed by Federal laws such as the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd), as amended (Refuge Administration Act); the National Wildlife Refuge System Improvement Act of 1997, which amended the Refuge Administration Act (Pub. L. 105–57) (Refuge Improvement Act); and the Alaska National Interest Lands Conservation Act of 1980 (Pub. L. 96–487) (ANILCA); by regulations implementing these laws; by treaties; by Service policy; and by principles of sound resource management that establish standards for resource management or limit the range of potential activities (*e.g.,* visitor use opportunities administered via special use permitting) that may be allowed on the Refuge.

ANILCA authorizes traditional activities such as subsistence; the exercise of valid commercial fishing rights; and hunting, fishing, and trapping in accordance with State and Federal laws. Under Service regulations implementing this direction, public recreational activities within the Alaska National Wildlife Refuges are authorized as long as such activities are conducted in a manner compatible with the purposes for which the areas were established (50 CFR 36.31(a)). Such recreational activities include but are not limited to sightseeing, nature observations and photography, hunting, fishing, boating, camping, hiking, picnicking, and other related activities.

The Refuge Administration Act, as amended by the Refuge Improvement Act, defines wildlife-dependent recreation and wildlife-dependent recreational use as hunting, fishing, wildlife observation and photography, or environmental education and interpretation. These uses are encouraged and will receive emphasis in management of public use on refuges (16 U.S.C. 668dd).

These objectives are reflected in the 2010 Kenai NWR Revised Comprehensive Conservation Plan and Environmental Impact Statement (Revised CCP, p. J–6). In addition, ''The Refuge will manage all recreation use to avoid crowded conditions and to minimize adverse effects to cultural resources, fish and wildlife, wilderness, and other special values of the Refuge. 'Leave No Trace' will be the standard. The least intrusive means of managing use will be employed. Actions that may be taken to manage recreation include limiting commercial guiding and outfitting; regulating use and access subject to the provisions of section 1110(a) of ANILCA; and recommending changes in State and/or Federal fishing, hunting, and/or trapping regulations. When necessary, recreation opportunities may be seasonally or otherwise restricted to minimize user conflicts and to protect the natural or other values of a refuge. Any restrictions on public use will follow the public participation and closure procedures at 50 CFR 36, 43 CFR 36, or other applicable regulations.'' (Revised CCP, p. J–31).

**Secretarial Orders on Recreation and Coordination With Partners**

This proposed rule advances the priorities of the Department of the Interior (DOI) to increase recreational access on the lands and waters it administers; improve collaboration with States, Tribes, and other partners in doing so; and align Federal and State regulations, to the extent practicable and consistent with Federal law. The Secretary has issued Secretarial Orders and associated guidance to advance these priorities.

On March 2, 2017, Secretarial Order 3347, Conservation Stewardship and Outdoor Recreation was signed. Part of the stated purpose of Secretarial Order 3347 is to increase outdoor recreation and improve the management of game species and their habitat. Secretarial Order 3347 directs DOI to identify specific actions to (1) expand access significantly for recreational hunting and fishing on public lands, and (2) improve recreational hunting and fishing cooperation, consultation, and communication with State wildlife managers.

On September 15, 2017, the Secretary signed Order 3356, Hunting, Fishing, Recreational Shooting, and Wildlife Conservation Opportunities and Coordination with States, Tribes, and Territories. Part of the stated purpose of Secretarial Order 3356 is for DOI, in greater collaboration with State partners, to increase outdoor recreation opportunities for all Americans, including opportunities to hunt. Secretarial Order 3356, among other things, directs DOI to (1) identify whether hunting opportunities on DOI lands could be lawfully expanded; (2) work cooperatively with State wildlife agencies to enhance their access to DOI lands for wildlife management actions; (3) work cooperatively with State wildlife agencies to ensure that hunting regulations for DOI lands and waters complement the regulations on the surrounding lands and waters; and (4) work in close coordination and cooperation with the appropriate State wildlife agency to begin the necessary process to modify regulations in order to advance shared wildlife conservation goals/objectives that align predator management programs, seasons, and methods of take permitted on all DOI-managed lands and waters with corresponding programs, seasons, and methods established by State wildlife management agencies to the extent legally practicable.

In addition to generally supporting increased recreational access on Federal lands and waters, the Administration has made it a priority to align State regulations with Federal regulations. On September 10, 2018, the Secretary issued a Secretarial memorandum that was issued to the heads of DOI bureaus and offices recognizing States as the primary first-line authorities for fish and wildlife management and expressing a commitment to defer to States in this regard except as otherwise required by Federal law. The memorandum further directed agencies to review all regulations, policies, and guidance pertaining to fish and wildlife conservation and management, specifically provisions that are more restrictive than otherwise applicable State provisions.

**Regulatory Review of Kenai Public Use Regulations**

On October 2, 2017, the Service published a document in the **Federal Register** notifying the public that we were conducting a regulatory review of the public use regulations in 50 CFR 36.39 for the Kenai NWR (82 FR 45793). In cooperation with the State of Alaska, pursuant to the direction in Secretarial Orders 3347 and 3356, we reviewed the refuge's public use regulations to consider changes.

During the review, the State of Alaska asked the Service to reconsider refuge-specific regulations for Kenai NWR that restrict public access and hunting and fishing opportunities. First, they requested that the Service eliminate the prohibition on the harvest of brown bears at bait stations, as the regulation is not related to a conservation concern and existing State regulations are in effect for the harvest management of black and brown bears.

Secondly, the State requested that firearm discharge restrictions along the Kenai and Russian Rivers be removed, as the State already prohibits firearm discharge in this area during the peak public use time of June and July and does not consider it necessary to extend the restriction for public safety. Restricting firearm discharge in that area later in the year can limit the public's ability to use public lands for priority public uses, such as for moose and brown bear hunting, seasons for which begin on September 1.

Thirdly, the State commented that the restriction on non-motorized wheeled vehicles, including bicycles and game carts, is not commensurate with resource impacts and therefore requested that we reconsider their use. Finally, the State requested that off-road vehicles and snowmobiles be allowed for ice fishing, during adequate snow/ice cover, similar to the allowance of licensed highway vehicles, as they weigh considerably less and, as a result, can be safer than highway vehicles when ice depth is inconsistent.

On September 27, 2018, DOI sent a letter to the States from then-Deputy Secretary David Bernhardt asking for direct feedback on the regulatory review process, especially in situations where Federal prescriptions for fish and wildlife management are more restrictive and inconsistent with State policies, and to identify opportunities to reduce regulatory inefficiencies in furtherance of the Secretarial Orders. During consultation and in its January 2, 2019, response letter, the State of Alaska submitted these and additional requests for Kenai NWR regulations and programs to be reviewed. The State requested the Service requirement to obtain a Federal trapping permit at 50 CFR 36.32(c)(1)(iii) be rescinded, as duplicative with State requirements and an interference with wildlife management and public use. The State also renewed its longstanding requests to cooperatively reevaluate closures at 50 CFR 36.39(i) to accessing certain

remote lakes by aircraft and on harvest opportunities within the Skilak Wildlife Recreation Area.

The Service will continue to coordinate with the State, Tribes, and other partners on management of public uses on Kenai NWR to ensure the intent of the Secretarial Orders 3347 and 3356, to the extent practicable and consistent with Federal law.

**This Proposed Rule**

The purpose of this proposed rule is to align public use regulations on Kenai NWR with State of Alaska regulations to the extent practicable and consistent with Federal law, enhance consistency with harvest regulations on surrounding non-Federal lands and waters, and increase access to Federal lands in furtherance of Secretarial Orders 3347 and 3356.

The Service proposes to amend its refuge-specific regulations for Kenai NWR at 50 CFR 36.39 to allow for the harvest of brown bears over bait as allowed by the State of Alaska's hunting regulations (title 5 of Alaska Administrative Code (AAC) at chapter 92.044), allow the discharge of firearms along the Kenai and Russian Rivers during certain times of the year, increase access by bicycles and game carts, and allow snowmobiles, all-terrain vehicles, and utility task vehicles on certain lakes when there is adequate snow and ice cover. These amendments will expand priority public use opportunities for all Americans, and complement State regulations on lands and waters surrounding the Kenai NWR to the extent practicable and consistent with Federal laws, including the Refuge Administration Act, the Refuge Improvement Act, and ANILCA. The Service further proposes to amend its regulations at 50 CFR 36.32(c)(1)(iii) to remove the Federal permit requirement for trapping within the Kenai NWR, allowing trapping within the refuge in accordance with State and Federal law. Consistent with both Congressional and Secretarial direction, the Service is considering and seeking public comment on whether a regulatory permit requirement remains necessary and appropriate to ensure trapping is compatible with refuge purposes.

This proposed rule reflects the Service's ongoing commitment to working with the State of Alaska and using State regulatory processes to the maximum extent allowed by Federal law in proposing changes to existing State regulations governing or affecting the taking of fish and wildlife in Alaska refuges, as required by Congress and affirmed in 43 CFR part 24, the Revised CCP, the 1982 Master Memorandum of Understanding between the Service and the State of Alaska, Secretarial Orders 3347 and 3356, and the 2016 refuge-specific rulemaking, 81 FR 27030 (May 5, 2016). The Service maintains its closure authority at 50 CFR 36.42 to ensure these public uses remain compatible with refuge purposes, including through requiring a refuge special use permit when determined to be necessary and appropriate to address resource-related concerns. The Service remains responsible for visitor management on the Alaska National Wildlife Refuge consistent with ANILCA and the Refuge Administration Act, which includes conducting planning efforts to determine how to best manage diverse public uses on the Kenai NWR.

**Public Participation**

It is the policy of DOI, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we will accept written comments and information from all interested parties during the comment period (see **DATES**) on the provisions in this proposed rule, as well as other provisions of 50 CFR 36.39(i). We are soliciting public comment and supporting data to gain information on the draft environmental assessment and the proposed rule. In addition, we are soliciting information that would help inform the Service's regulatory impacts analysis, such as costs and benefits and trade-offs associated with the changes to Kenai NWR public use regulations being proposed in this rulemaking. As a specific example, we are soliciting information or data that would help the Service quantify the effects of increasing opportunities for consumptive uses such as brown bear hunting through the proposed allowance of hunting this species over bait on opportunities for non-consumptive uses such as viewing and photography of brown bears on Kenai NWR, including any economic impacts which might result.

We will consider information and recommendations we receive during the comment period in our final determination on this proposed action. You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments submitted by fax, email, or in any way other than those methods listed in **ADDRESSES**.

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask the Service in your comment to withhold your personal identifying information from public review, the Service cannot guarantee that it will be able to do so.

**Compliance With Other Laws, Executive Orders, and Department Policy**

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has waived their review regarding their significance determination of this proposed rule.

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

*Executive Order 13771*

We do not believe this proposed rule is an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because we believe this rule is not significant under E.O. 12866; however, the Office of Information and Regulatory Affairs has waived their review regarding their E.O. 12866 significance determination of this proposed rule.

*Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996)), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that

describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b).

Amending the regulations as proposed may have small incremental changes on total visitor use days. Increasing access opportunities for bicycling, game carts, snowmobiles, all-terrain vehicles, and utility task vehicles may correspond with a slight increase in visitor use days (about 5,000 to 10,000 visitors per year). In addition, hunting days on the refuge may increase if hunters using bait stations are allowed to take brown bears, even though State seasons and harvest limits for brown bears will remain in effect. Conversely, wildlife watching activities may decrease if there are decreased opportunities to view bears. We estimate that the overall change in recreation use-days would represent less than 1 percent of the average recreation use-days on the refuge (1 million visitors annually).

Small businesses within the retail trade industry (such as hotels, gas stations, etc.) (NAIC 44) and accommodation and food service establishments (NAIC 72) may be impacted by spending generated by refuge visitation. Seventy-six percent of establishments in the Kenai Peninsula Borough qualify as small businesses. This statistic is similar for retail trade establishments (72 percent) and accommodation and food service establishments (65 percent). Due to the negligible change in average recreation days, this proposed rule would have a minimal effect on these small businesses.

With the negligible change in overall visitation anticipated from this proposed rule, it is unlikely that a substantial number of small entities would experience more than a small economic impact. Therefore, we certify that, if made final, this rule would not have a significant economic impact on a substantial number of small entities as defined under the RFA. An initial/final regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required.

*Small Business Regulatory Enforcement Fairness Act*

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

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

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

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

*Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.)*

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. It addresses public use of refuge lands and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

*Takings (Executive Order 12630)*

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

*Federalism (Executive Order 13132)*

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

*Civil Justice Reform (Executive Order 12988)*

This proposed rule complies with the requirements of Executive Order 12988. This rule:

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

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

*Consultation With Indian Tribes (Executive Order 13175 and Department Policy)*

The Department of the Interior strives to strengthen its government-to government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this proposed rule under the criteria in Executive Order 13175 and under the Department's tribal consultation and Alaska Native Claims Settlement Act Native Corporation policies. The Service notified Alaska Native tribes and corporations of its intent to undertake this rulemaking in October 2017 and invited them at that time to consult on the harvest of brown bears over bait, the discharge of firearms along the Kenai and Russian Rivers during certain times of the year in accordance with State law, increased access for the public using bicycles and game carts, and the use of snowmobiles, all-terrain vehicles, and utility task vehicles on certain lakes when there is adequate snow and ice cover. While no request for formal consultation was received, the Service initiated discussions on the rulemaking with one tribe and one corporation during the course of ongoing coordination with them. We will consult with all tribes and corporations that request formal consultation during this rulemaking process.

*Paperwork Reduction Act (44 U.S.C. 3501 et seq.)*

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). OMB has previously approved the information collection requirements associated with Special Use Permits and assigned OMB Control Number 1018–0102 (expires 08/31/2020). You may view the information collection request 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.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

The Service is analyzing this proposed rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), 43 CFR part 46, and part 516 of the DOI Departmental Manual. We

have completed a draft environmental assessment, which is available at *http://www.regulations.gov* in Docket No. FWS–R7–NWRS–2017–0058. We are soliciting public comment and supporting data to gain information on the draft environmental assessment and the proposed rule as set forth above in **DATES** and **ADDRESSES**.

*Effects on the Energy Supply (Executive Order 13211)*

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

*Clarity of This Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**List of Subjects in 50 CFR Part 36**

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

**Proposed Regulation Promulgation**

Accordingly, the Service proposes to amend 50 CFR part 36 as set forth below:

## PART 36—ALASKA NATIONAL WILDLIFE REFUGES

■ 1. The authority citation for part 36 continues to read as follows:

**Authority:** 16 U.S.C. 460(k) *et seq.,* 668dd–668ee, 3101 *et seq.,* Pub. L. 115–20, 131 Stat. 86.

### § 36.32 [Amended]

■ 2. In § 36.32, revise paragraph (c)(1)(iii) by removing the word ''Kenai'' and the comma that follows it.

■ 3. Amend § 36.39 by revising paragraphs (i)(3)(i), (i)(4)(ii)(E), (i)(5)(i) and (ii), and (i)(9)(iii) to read as follows:

### § 36.39 Public use.

* * * * *

(i) * * *

(3) * * *

(i) We prohibit the operation of all off-road vehicles, as defined at § 36.2, except that four-wheel-drive, licensed, and registered motor vehicles designed and legal for highway use may operate on designated roads, rights-of-way, and parking areas open to public vehicular access. At the operator's risk, we also allow licensed and registered motor vehicles designed and legal for highway use, all-terrain vehicles, utility task vehicles, and registered snowmobiles on Hidden, Engineer, Kelly, Petersen, and Watson Lakes only to provide access for ice fishing. You must enter and exit the lakes via existing boat ramps.

* * * * *

(4) * * *

(ii) * * *

(E) In the Skilak Wildlife Recreation Area, except on Skilak Lake and as provided in paragraph (i)(3) of this section. You must enter and exit via the Upper and Lower Skilak Lake campground boat launches.

* * * * *

(5) * * *

(i) You may not discharge a firearm within ¼ mile of designated public campgrounds, trailheads, waysides, buildings including public use cabins, or the Sterling Highway from the east Refuge boundary to the east junction of the Skilak Loop Road. From May 1 to October 31, you may not discharge a firearm within ¼ mile of the west shoreline of the Russian River from the upstream extent of the Russian River Falls downstream to its confluence with the Kenai River, and from the shorelines of the Kenai River from the east refuge boundary downstream to Skilak Lake, and from the outlet of Skilak Lake downstream to the refuge boundary, except that firearms may be used in these areas to dispatch animals while lawfully trapping and shotguns may be used for waterfowl and small game hunting along the Kenai River. These firearms-discharge regulations do not preclude use of firearms for taking game in defense of life and property as defined under State law.

(ii) We prohibit hunting over bait, with the exception of hunting for black bears and brown bears, and then only as authorized under the terms and conditions of a special use permit (FWS Form 3–1383–G) issued by the Refuge Manager.

* * * * *

(9) * * *

(iii) *May I use non-motorized wheeled vehicles on the refuge?* Yes, you may use bicycles and other non-motorized wheeled vehicles, including hand-operated game carts specifically manufactured to transport meat of legally harvested big game, on refuge roads and rights-of-way designated for public vehicular access and designated refuge trails. In addition, you may use said game carts on designated industrial roads closed to public vehicular access. Information on these designated roads and trails is available from Refuge Headquarters. Further, you may use a wheelchair if you have a disability that requires its use for locomotion.

* * * * *

**George Wallace,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2020–10924 Filed 6–10–20; 8:45 am]

**BILLING CODE 4333–15–P**

# Notices

Federal Register
Vol. 85, No. 113
Thursday, June 11, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. AMS–SC–18–0008; SC18–944/980/999–1]**

### International Trade Data System Test Concerning the Electronic Submission Through the Automated Commercial Environment of Notification of Importation of Fruits, Vegetables, and Specialty Crops Required by the Agricultural Marketing Service Using the Partner Government Agency Message Set; Conclusion of Pilot Test

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the conclusion of a pilot test of the International Trade Data System (ITDS) involving the electronic submission of data related to importations of fruits, vegetables, and specialty crops. The Agricultural Marketing Service (AMS) regulates imports of the food commodities and is engaged in a partnership with U.S. Customs and Border Protection (CBP) and other government agencies to test the Partner Government Agency (PGA) Message Set component of the Automated Commercial Environment (ACE). The submission of this import information is required under section 608e (section 8e–1) of the Agricultural Marketing Agreement Act of 1937. The pilot program tested the electronic transmission of data related to AMS's responsibilities through CBP's ACE known as the PGA Message Set to AMS's Compliance Enforcement Management System (CEMS).

**DATES:** The pilot test will conclude on September 2, 2020.

**FOR FURTHER INFORMATION CONTACT:** Richard Lower, Assistant to the Director, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938; Email: *Richard.Lower@usda.gov.*

**SUPPLEMENTARY INFORMATION:** This notice announces the conclusion of the pilot in which AMS tested the electronic filing of section 8e data in the ACE via the PGA Message Set. On August 6, 2015, AMS published a notice in the **Federal Register** (80 FR 46947) announcing a pilot test of the PGA Message Set for the electronic submission of import data required by section 8e. The pilot was set to begin no earlier than July 13, 2015 and was to continue until its conclusion was announced by publication in the **Federal Register**.

#### International Trade Data System

The pilot was conducted in furtherance of ITDS, which is statutorily authorized by section 405 of the Security and Accountability for Every (SAFE) Port Act of 2006, Public Law 109–347. The purpose of ITDS, as stated in section 405 of the SAFE Port Act of 2006 (19 U.S.C. 1411(d)), is to ''eliminate redundant information filing requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by the U.S. Customs and Border Protection (CBP), for the collection and distribution of standard electronic import data required by all participating Federal agencies.''

ITDS provides an electronic ''single window'' to the import trade through CBP's ACE, which streamlines business processes, facilitates growth in trade, ensures cargo security, and fosters participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. ACE is the primary system through which the global trade community electronically files information about imports so that admissibility into the United States may be determined and government agencies, including AMS, may ensure compliance.

#### Partner Government Agency Message Set

The PGA Message Set is the data needed to satisfy PGA reporting requirements. ACE enables the message set by acting as the ''single window'' through which trade-related data required by the PGAs is submitted by trade participants only once to CBP. This data must be submitted prior to the arrival of the merchandise on the conveyance transporting the cargo to the United States as part of an ACE Entry/Cargo Release or Entry Summary. After trade participants submit the data, the system validates and makes the information available to the relevant PGAs involved in import, export, and transportation-related decision making. The data is used to complete merchandise entry and entry summary requirements, and allows for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery. Also, the electronic PGA Message Set eliminates the necessity for the submission and subsequent handling of paper documents.

#### Conclusion of ITDS Imports Pilot for AMS

The pilot was set to begin no earlier than July 13, 2015 and was to continue until its conclusion was announced by publication in the **Federal Register**. AMS initially conducted the pilot at certain ports of entry and eventually expanded the pilot nationally. The pilot tested the transmission of AMS data through CBP's ACE and the analysis of that data by AMS's CEMS. CBP and AMS have evaluated the transmission and analysis of the trade data related to AMS responsibilities and have found the pilot successful. As such, the ACE PGA Message Set is deemed to have the operational capabilities necessary to electronically collect the section 8e data required by AMS, and AMS's CEMS is deemed to have the operational capabilities necessary to analyze that data. Therefore, this rule announces the conclusion of the AMS PGA Message Set pilot for imports.

The public was invited to comment on any aspects of the pilot. No comments were received.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2020–10944 Filed 6–10–20; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Warm Springs, North River, and Glenwood-Pedlar Ranger Districts, George Washington National Forest; Highland, Bath, and Augusta Counties, Virginia; Marlington Ranger District, Monongahela National Forest; Pocahontas County, West Virginia, Atlantic Coast Pipeline and Supply Header Supplemental Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a supplemental environmental impact statement.

**SUMMARY:** The USDA Forest Service is preparing a Supplemental Environmental Impact Statement (SEIS) to the 2017 Federal Energy Regulatory Commission (FERC) Final Environmental Impact Statement (FEIS) for the Atlantic Coast Pipeline (ACP) and Supply Header project. The ACP proposed action that is specific to National Forest System (NFS) lands is to construct, operate and maintain a 42-inch natural gas pipeline with associated facilities, such as roads, across the Monogahela (MNF) and George Washington National Forests (GWNF).

**DATES:** The Draft SEIS is expected to be available in July 2020 and the Final SEIS is anticipated later in 2020.

**FOR FURTHER INFORMATION CONTACT:** For media inquiries or to leave a message about the project on the GWNF, please contact Nadine Siak at: *SM.FS.GWJNF-PA@usda.gov* or leave a voicemail at 1–888–603–0261. For media inquiries or to leave a message about the project on the MNF, please contact Kelly Bridges at *kelly.bridges@usda.gov* or 304–635–4432. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

#### Background and History

On November 17, 2017, the Forest Service adopted the environmental analysis prepared by FERC for the ACP and Supply Header Project, and a final Record of Decision (ROD) was signed by the Southern and Eastern Regional Foresters. The ROD: (1) Authorized the use and occupancy of NFS lands for Atlantic Coastal Pipeline, LLC (Atlantic) to construct, operate and maintain a 42-inch interstate natural gas pipeline across the MNF and GWNF, and (2) Amended the MNF's and GWNF's Land and Resource Management Plans (Forest Plans) to allow the project to be consistent with the Forest Plans.

On January 23, 2018 the Forest Service issued the special use permit (SUP) and granted the right of way. On December 13, 2018, the Fourth Circuit Court of Appeals vacated the Forest Service ROD and the SUP issued to the ACP (*Cowpasture River Preservation Ass'n* v. *U.S. Forest Service*). The Court identified both National Forest Management Act (NFMA) and National Environmental Policy Act (NEPA) deficiencies as well as a Mineral Leasing Act issue which was granted a writ of certiorari by the Supreme Court of the United States. The Supreme Court of the United States recently held oral argument regarding whether the Forest Service can issue a Mineral Leasing Act authorization to cross the Appalachian National Scenic Trail (ANST) where it traverses the NFS lands. A decision is expected soon. The proposed action includes constructing the pipeline underneath the ANST. The Forest Service will potentially have to revise this NOI after the Supreme Court ruling. For more detailed information on the background and history of the ACP project, see the project website at: *https://www.fs.usda.gov/detail/gwj/home/?cid=stelprd3824603.*

#### Purpose and Need for Action

The purpose of the project is to authorize the use and occupancy of NFS lands for Atlantic to construct, operate, and maintain a 42-inch interstate natural gas pipeline across the MNF and GWNF. A Forest Service decision is needed because the proposed route crosses approximately 21 miles of NFS lands and applications for natural gas pipelines that involve Federal land are governed by Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 181) and the Energy Policy Act of 2005.

There is a need for a supplemental analysis and new decision because the Fourth Circuit Court of Appeals vacated the Forest Service ROD and SUP. The Court identified both NFMA and NEPA issues. To resolve the Court's NFMA issues, there is a need to apply Forest Service Planning Rule requirements for soil, water, and threatened and endangered species to the Forest Plan amendments, consistent with 36 CFR 219.13(b)(5). The Court also identified NEPA deficiencies including the need for the Forest Service to analyze off-forest routes, and to evaluate erosion, sedimentation, and water quality effects in relation to anticipated mitigation effectiveness. There is a related need to amend the MNF's and GWNF's Forest Plans for the project to be consistent with the two Forest Plans. There is also a need to consider relevant, new information in the SEIS. The Forest Service will also evaluate any relevant changed circumstances since the ROD was signed in November 2017. Changed circumstances include, but are not limited to, new federally listed threatened and endangered species and critical habitat designations. The existing condition, *i.e.,* environmental baseline, also needs to be updated where relevant.

#### Proposed Action

In response to the purpose and need, the following activities are proposed to be authorized by the Forest Service under a SUP:

- Construct a 42-inch pipeline across 5.1 miles of the MNF and 15.1 miles on the GWNF. Construction is expected to take approximately two years.
- Authorize a 125-foot-wide temporary construction right-of-way for pipeline installation. For most pipeline construction activities, this width would accommodate large equipment, pipe stringing and set up, welding, the trench, and the temporary storage of topsoil and trench spoil. The construction width would be reduced to approximately 75 feet in most wetlands and other ecologically sensitive areas, such as riparian habitat.
- Install above-ground facilities, limited to pipeline markers (*e.g.,* at road and trail crossings) to advise the public of pipeline presence and cathodic pipeline protection test stations that are required by Department of Transportation.
- Maintain and improve as needed approximately 63 miles of roads (29 miles on the MNF and 34 miles on the GWNF) to support pipeline construction and operation. Improvement would include drainage structures, light grading, graveling, and spot widening to accommodate construction traffic.
- Construct approximately 19 miles of roads. Of those, approximately 7 miles would be new contruction (6 miles on the MNF and 1 mile on the GWNF) and 12 miles of improved, existing road prisms (3 miles on MNF and 9 miles on the GWNF). Improving the road prisms is considered new

construction because they are not currently managed as open roads.

• The pipeline would be constructed and maintained in accordance with an updated construction, operation, and maintenance plan (COM Plan) that includes details on restoration, rehabilitation, visual resources, and all required mitigation for reducing or eliminating impacts to resources. See the FERC FEIS, Sec. 1.4 for a complete list of requirements for the ACP.

Four Forest Plan standards on the MNF and nine Forest Plan standards in Management Area 5C on the GWNF would be amended (see ''Forest Plan Amendment'' section) to ensure the SUP is consistent with the Forest Plans. Upon completion of pipeline construction, a longer-term SUP would be issued for a period up to 30 years for the operation and maintenance of a right-of-way.

**Forest Plan Amendments**

The Forest Plan Amendment on the MNF would modify four standards as described in Tables 2 and 3 in the 2017 Forest Service ROD including SW06 (severe rutting), SW07 (use of wheeled and/or tracked, motorized equipment), SW03 (disturbed soil rehabilitation), and TE07 (threatened and endangered species, special use permits).

The Forest Plan Amendment on the GWNF would place the ACP into Management Area 5C (Designated Utility Corridors) and amend FW–244 (utility corridors), FW–5 (revegetation), FW–8 (water saturated areas), FW–16 (exposed soil in channeled ephemeral zones), FW–17 (residual basal area in channeled ephemeral zones), use of wheeled and/or tracked, motorized equipment), 11–003 (exposed soil within riparian corridors), 4A–025 (Appalachian National Scenic Trail), 2C3–015 (Eligible Recreational River Area), and FW–182 (scenic integrity objectives).

The Planning Rule at 36 CFR 219.13(b)(2) requires responsible officials to provide notice of which substantive requirements of 36 CFR 219.8 through 219.11 are likely to be directly related to the amendment. Whether a rule provision is directly related to an amendment is determined by any one of the following: The purpose for the amendment, a beneficial effect of the amendment, a substantial adverse effect of the amendment, or a lessening of plan protections by the amendment (36 CFR 219.13(b)(5)). Based on those criteria, the substantive Planning Rule provisions that are likely to be directly related to the amendments are: § 219.8(a)(1) (terrestrial ecosystems); § 219.8(a)(2)(ii) (soils and water productivity); § 219.8(a)(2)(iv) (water resources); § 219.8(a)(3)(i) (ecological integrity of riparian areas); § 219.9(b) (contributions to recovery of threatened and endangered species); § 219.10(a)(3) (utility corridors); § 219.10(b)(1)(vi) (other designated areas); § 219.10(b)(1)(i) (scenic character); and § 219.11(c) (timber harvesting for purposes other than timber production).

**Responsible Official**

The responsible officials are the Regional Foresters for the Southern and Eastern Regions.

**Nature of Decision To Be Made**

Given the purpose and need, the Regional Foresters will review the proposed action, alternatives, the environmental consequences, the stipulations (mitigation) that would be applicable in the SUP, public comment, and the project record in order to make the following decisions on whether to: (1) Authorize the use and occupancy of NFS land for Atlantic to construct, operate, and maintain a natural gas pipeline that crosses NFS lands administered by the MNF and GWNF via issuance of a SUP; (2) Approve Forest Plan amendments that would modify four standards in the MNF's Forest Plan and nine standards in the GWNF's Forest Plan; and (3) Adopt all or portions of the FERC FEIS.

While the Supply Header project was inclued in the FERC FEIS, it is not on NFS lands. Therefore, no analysis will be prepared or decision made on this project.

**Public Engagement Process**

Scoping was completed and summarized in the FERC FEIS (FEIS, Section ES–2, 1.3). Written, specific comments, including those that were relevant to NFS lands, identified concerns and issues that were addressed in the FEIS. Scoping will not be repeated and this SEIS will focus on the following:

• Issues identified in the Court ruling including the potential for the proposal to cause adverse impacts to soil, water, and threatened and Endangered Species Act (ESA) Threatened and Endangered species and their habitat;

• The purpose and impact of the Forest Plan amendments on affected resources (soil, water, ESA Threatened and Endangered species, scenic integrity, ANST, and eligible recreation rivers) and consistency with the Planning Rule;

• The feasibility and practicality of having routes that are not on NFS lands; and,

• A re-evaluaton and assessment of erosion, sedimentation, and water quality effects in relation to anticipated mitigation effectiveness.

Additional opportunities for public comment will be provided when the Draft SEIS is available. A Forest Service decision to authorize the construction and operation of the ACP will be subject to the Forest Service predecisional administrative review procedures established in 36 CFR 218 (per 36 CFR 219.59(b)). Those wishing to object must meet the requirements at 36 CFR 218, Subpart A and B for the project.

**Lisa A. Northrop,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2020–12621 Filed 6–10–20; 8:45 am]

**BILLING CODE 3411–15–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the New Mexico Advisory Committee; Correction

**AGENCY:** Commission on Civil Rights.

**ACTION:** Notice; correction to call-in number.

**SUMMARY:** The Commission on Civil Rights published a notice in the **Federal Register** on Wednesday, May 27, 2020, concerning a meeting of the New Mexico Advisory Committee. The document contained an incorrect call-in number, which now has changed to a new call-in number.

**FOR FURTHER INFORMATION CONTACT:** Angelica Trevino, (202) 695–8935, *atrevino@usccr.gov.*

**SUPPLEMENTARY INFORMATION:**

**Correction**

In the **Federal Register** of Wednesday, May 27, 2020, in FR Doc. 2020–11291, on page 31739, second column of 31739, correct the call-in number to (888) 394–8218.

Dated: June 5, 2020.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2020–12622 Filed 6–10–20; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Tennessee Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules

and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that the Tennessee Advisory Committee will hold a public meeting on Friday, June 12, 2020, at 11:00 a.m. Central Time, to discuss issuing a statement of concern.

*Public Call Information:* Dial: 800–353–6461; Conference ID: 9610767.

**FOR FURTHER INFORMATION CONTACT:** David Barreras (Designated Federal Officer) at *dbarreras@usccr.gov* or (312) 353–8311.

**SUPPLEMENTARY INFORMATION:** This meeting is available to the public through the following toll-free call-in number: 800–353–6461, conference ID number: 9610767. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, John C. Kluczynski Federal Building, 230 S Dearborn St., Suite 2120, Chicago, IL 60604. They may be faxed to the Commission at (312) 353–8324 or emailed to *dmussatt@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzm9AAA.* Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

**Agenda**

I. Opening Remarks
II. Discussion on statement of concern
III. Public Comments
IV. Adjournment

Dated: June 5, 2020.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2020–12619 Filed 6–10–20; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

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

**ACTION:** Notice and opportunity for public comment.

**SUMMARY:** The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

**SUPPLEMENTARY INFORMATION:**

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[5/30/2020 through 6/5/2020]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| Tower Publishing d/b/a Rogue Industries. | 650 Cape Road, Standish, ME 04084. | 6/5/2020 | The firm manufactures leather goods including wallets, handbags, and other fashion accessories. |

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

**Miriam Kearse,**

*Lead Program Analyst.*

[FR Doc. 2020–12593 Filed 6–10–20; 8:45 am]

**BILLING CODE 3510–WH–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–053, A–570–073]**

### Certain Aluminum Foil and Common Alloy Aluminum Sheet From the People's Republic of China: Correction to Final Results of Antidumping Duty Changed Circumstances Reviews

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

**SUMMARY:** The Department of Commerce (Commerce) is correcting the final results of antidumping duty changed circumstances reviews (CCRs) of certain aluminum foil (aluminum foil) and

common alloy aluminum sheet (aluminum sheet) from the People's Republic of China (China) to state the correct cash deposit requirements.

**DATES:** Applicable June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Joshua DeMoss, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3362.

**SUPPLEMENTARY INFORMATION:** On May 22, 2020, Commerce published the *Final Results* of the antidumping duty CCRs of aluminum foil and aluminum sheet from China.[1] In the *Final Results,* Commerce inadvertently stated that Commerce would instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced or exported by Shanghai Huafon Aluminium Corporation (Shanghai Huafon).[2] Commerce is correcting the *Final Results* to clarify that Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced and exported by Shanghai Huafon and entered, or withdrawn from warehouse, for consumption on or after the publication date of the *Final Results* at 73.66 percent for aluminum foil, and at 49.85 percent for aluminum sheet. These cash deposit requirements shall remain in effect until further notice.

This correction to the *Final Results* is published in accordance with sections 751(b)(1) and 736(a) of the Tariff Act of 1930, as amended.

Dated: June 5, 2020.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2020–12641 Filed 6–10–20; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XU011]**

### Meeting of the Marine Fisheries Advisory Committee

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

**ACTION:** Notice of open public meeting.

**SUMMARY:** This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee (MAFAC). The members will hear presentations and discuss COVID–19 impacts on marine communities and agency operations, the E.O. Promoting American Seafood competitiveness and Economic Growth, seafood promotion and marketing in the U.S., and recommendations related to offshore wind citing and operations.

**DATES:** The meeting will be June 29, 12:30–5 p.m.; and June 30 and July 1, 2020, 1–4:30 p.m., Eastern Time.

**ADDRESSES:** Meeting is by webinar and teleconference.

**FOR FURTHER INFORMATION CONTACT:** Heidi Lovett; NOAA Fisheries Office of Policy; (301) 427–8034; email: *Heidi.Lovett@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of a meeting of MAFAC. The MAFAC was established by the Secretary of Commerce (Secretary), and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The MAFAC charter and summaries of prior MAFAC meetings are located online at *https://www.fisheries.noaa.gov/topic/partners#marine-fisheries-advisory-committee.*

#### Matters To Be Considered

This meeting time and agenda are subject to change. The meeting is convened to hear presentations and updates and to discuss policies and guidance on the following topics: Impacts of COVID–19 on marine communities and agency operations, regulatory programs, and science operations; the new E.O. Promoting American Seafood Competitiveness and Economic Growth; seafood promotion and marketing in the U.S.; and recommendations related to offshore wind citing and operations and reducing impacts for fishing and marine science operations. MAFAC will receive updates on the phase 2 work of Columbia Basin Partnership Task Force. MAFAC will discuss various administrative and organizational matters, and meetings of subcommittees and working groups will be convened.

#### Time and Date

The meeting is scheduled for June 29, 12:30–5 p.m.; and June 30 and July 1, 2020, 1–4:30 p.m., Eastern Time by webinar and conference call. Access information for the public will be posted at *https://www.fisheries.noaa.gov/national/partners/marine-fisheries-advisory-committee-meeting-materials-and-summaries* by June 22, 2020.

Dated: June 8, 2020.

**Jennifer L. Lukens,**

*Federal Program Officer, Marine Fisheries Advisory Committee, National Marine Fisheries Service.*

[FR Doc. 2020–12643 Filed 6–10–20; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XA226]**

### Marine Mammals and Endangered Species

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

**ACTION:** Notice; issuance of permits and permit modifications.

**SUMMARY:** Notice is hereby given that permits and permit modifications have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

**ADDRESSES:** The permits and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427–8401; fax: (301) 713–0376.

**FOR FURTHER INFORMATION CONTACT:** Amy Hapeman (Permit Nos. 22156 and 23203), Shasta McClenahan (Nos. 21418 and 23220), and Erin Markin (Nos. 20528–02 and 23807); at (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the research, go to *www.federalregister.gov* and search on the permit number provided in Table 1 below.

[1] *See Certain Aluminum Foil and Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Antidumping Duty Changes Circumstances Reviews and Rescission of Countervailing Duty Changed Circumstances Reviews,*85 FR 31144 (May 22, 2020) (*Final Results*).

[2] *Id.,*85 FR at 31145 (Emphasis added).

TABLE 1—ISSUED PERMITS AND PERMIT MODIFICATIONS

| Permit No. | RTID | Applicant | Previous **Federal Register** Notice | Permit or Amendment Issuance Date |
|---|---|---|---|---|
| 20528–02 ..... | 0648–XR109 .... | South Carolina Department of Natural Resources, 217 Fort Johnson Road, Charleston, SC 29412 (Responsible Party: Bill Post). | 85 FR 20678; April 14, 2020. | May 28, 2020. |
| 21418 ..... | 0648–XA096 ..... | NMFS Alaska Fisheries Science Center's Marine Mammal Laboratory, 7600 Sand Point Way NE, Seattle, WA 98115–6349 (Responsible Party: John Bengtson, Ph.D.). | 85 FR 17540; March 30, 2020. | May 11, 2020. |
| 22156 ..... | 0648–XR002 ..... | Douglas Nowacek, Ph.D., Nicholas School of the Environment, Duke University Marine Laboratory, 135 Duke Marine Lab Rd, Beaufort, NC 28516. | 84 FR 70501; December 23, 2019. | May 8, 2020. |
| 23203 ..... | 0648–XR093 ..... | Environmental Institute of Houston at the University of Houston, Clear Lake, 2700 Bay Area Blvd, Box 540, Houston, TX 77508–1002 (Responsible Party: George Guillen). | 85 FR 8572; February 14, 2020. | May 27, 2020. |
| 23220 ..... | 0648–XR037 ..... | Andrew Trites, Ph.D., University of British Columbia, Room 247, Aquatic Ecosystems Research Laboratory, 2202 Main Mall, Vancouver, BC. | 85 FR 7296; February 7, 2020. | May 13, 2020. |
| 23807 ..... | 0648–XR107 ..... | Plimsoll Productions Limited, 51–55 Whiteladies Road, Bristol, BS8 2LY, United Kingdom (Responsible Party: Anuschka Schofield). | 85 FR 17867; March 31, 2020. | May 14, 2020. |

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

**Authority:** The requested permits have been issued under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: June 8, 2020.

**Julia Marie Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2020–12662 Filed 6–10–20; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

**[Docket ID: USA–2020–HQ–0011]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, Department of Defense (DoD).

**ACTION:** Notice of a modified System of Records.

**SUMMARY:** The Commander's Risk Reduction Dashboard (CRRD) provides Army Command Teams visibility of risk history, personal readiness factors, and adverse trends for units and individual soldiers in a near real-time environment. The CRRD effort is in response to an increase in suicides in the Army. It is designed to provide Command Teams with the necessary information to recognize suicidal behavior, death risks, and high-risk behavior. In addition to formatting changes to comply with Office of Management and Budget (OMB) Circular No. A–108, this System of Records is being modified to expand the categories of records, clarify the purpose and use of information, update the authorities, and to incorporate the applicable DoD Routine Uses in the published notice. All other changes to the notice are administrative in nature.

**DATES:** This System of Records modification is effective upon publication; however, comments on the Routine Uses will be accepted on or before July 13, 2020. The Routine Uses are effective at the close of the comment period.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Myron Wong, Department of the Army, U.S. Army Records Management and Declassification Agency, ATTENTION: Army Privacy and Civil Liberties Office, 9301 Chapek Road (Building 1458), Fort Belvoir, VA 22060–5605, or by calling 571–515–0243.

**SUPPLEMENTARY INFORMATION:** The Army developed the CRRD to improve leaders' visibility and increase personnel readiness. The Army Health Promotion, Risk Reduction, and Suicide Prevention Report 2010, initiated the CRRD requirements with the purpose of proactively identifying and mitigating the high-risk behavior of soldiers. The CRRD provides behavioral trends for individual soldiers and Army units. It consolidates information from multiple Army databases and presents command teams with a concise report about military personnel in their units involved in at-risk behaviors and the dates of occurrence. These reports are used by company and battalion commanders to decide how to proactively engage in intervention strategies with individual soldiers at the

earliest sign of high risk behaviors or a deviation from standards. By aggregating data, the CRRD will allow command teams at brigade level and higher to monitor subordinate units with high-risk trends and ensure commanders comply with Army reporting policies. As a risk mitigation tool, the CRRD enables commanders at all levels to make deliberate and informed personnel decisions to strengthen unit readiness and maintain the Army's warfighting capability.

The DoD notices for Systems of Records subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov.*

The proposed system reports, as required by the Privacy Act, as amended, were submitted on April 9, 2020, to the House Committee on Oversight and Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the OMB pursuant to OMB Circular No. A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication Under the Privacy Act,'' revised December 23, 2016 (December 23, 2016, 81 FR 94424).

Dated: June 8, 2020.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**SYSTEM NAME AND NUMBER:**

Commander's Risk Reduction Dashboard (CRRD), A0600–63 DAPE G–1.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Regional Network Enterprise Center-Redstone (RNEC–R), Building 5301–B, Sparkman Center, Redstone Arsenal, AL 35898

**SYSTEM MANAGER(S):**

SHARP, Ready and Resilient Directorate, Deputy Chief of Staff, G–1, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20320–3000, *usarmy.pentagon.hqda-dcs-g-1.list.crrd-army-g1@mail.mil.*

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 7902, Safety Programs; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 7013, Secretary of the Army; 18 U.S.C. 3771, Crime victims' rights; 29 U.S.C. Chapter 15, Occupational Safety and Health; 34 U.S.C. 41303, Uniform Federal Crime Reporting Act of 1988; 42 U.S.C. 290dd–2, Confidentiality of records; E.O. 12564, Drug Free Federal Workplace DoD Directive (DoDD) 1030.01, Victim and Witness Assistance; DoDD 6490.02E, Comprehensive Health Surveillance; DoD Instruction (DoDI) 1030.2, Victim and Witness Assistance Procedures; DoDI 6055.01, DoD Safety and Occupational Health Program; DoDI 6495.02, Sexual Assault Prevention and Response Program Procedures; Army Regulation (AR) 190–45, Military Police Law Enforcement Reporting; AR 195–2, Criminal Investigation Activities; AR 385–10, Army Safety Program; AR 600–63, Army Health Promotion; AR 600–85, Army Substance Abuse Program; AR 608–18, Family Advocacy Program; and E.O. 9397 (SSN), as amended.

**PURPOSE(S) OF THE SYSTEM:**

The CRRD will provide command teams (battalion commanders, company commanders, Command Sergeants Major, First Sergeants) with the necessary information to recognize early warning signs of high-risk behaviors and proactively engage in intervention activities to help reduce soldier suicides, risk-related deaths, and other negative outcomes of high-risk behavior. The command teams at battalion and company levels will be able to access information to help identify soldiers in the unit with high-risk profiles. The Command Teams at brigade and higher levels will only be provided aggregated data pertaining to their command level and its subordinate commands to identify high risk units. De-identified, aggregate data from the CRRD may also be used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness and conducting research.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Active duty Army, United States Army Reserve, and Army National Guard Soldiers.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Full name, social security number (SSN), DoD Identification (DoD ID) number, date of birth, photograph, height, weight, marital status, and number of dependent family members.

Military service data to include: Rank, Military Occupational Specialty, unit identification code, unit of assignment and assignment date, Exceptional Family Member Program enrollment, promotion dates, security clearance, deployment history, awards, education level, training attendance, and physical fitness test and body fat composition results.

Personal health and wellness information to include: Date of last health assessments, drug test results, substance abuse screenings/enrollments, pending medical boards dates, date of last psychotropic or opiate prescription, documented incidents related to suicide, and Family Advocacy Program interactions.

Other adverse information to include: Record of courts-martial, referred charges and case disposition, administrative disciplinary actions, criminal history, substantiated domestic and child abuse complaints, bars/flags to reenlistment, sex offender identifier code, financial problems, and substance use disorder history.

**RECORD SOURCE CATEGORIES:**

Individual, Command Teams, CRRD Local/Regional Administrators, Army Central Registry, Army Safety Management Information System, Army Law Enforcement Reporting and Tracking System, Army Training Management System, Defense Casualty Information Processing System, Drug and Alcohol Management Information System, Defense Finance and Accounting System, Army Organization Server, Army Training Requirements And Resource System, Army Training Management System, Defense Readiness Reporting System—Army, Deployed Theater Accountability System, Integrated Disability Evaluation System, Digital Training Management System, Master Resilience Trainer—Database of Record, Medical Occupational Data System, Military Justice Online, Official Military Personnel File, Risk Reduction Program, Military Health System Mart, Pharmacy Data Transaction Services, Theater Medical Data Store, US Military Entrance Processing Command Integrated Resource System, U.S. Army Recruiting Command, Army Waiver Data, Department of Defense Suicide Event Report, Defense Sexual Assault Incident Database, Army Leader Unit Risk Readiness Tool, Inspector General Action Request System, TRANSCOM Reference Data Management.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552 a(b) of the Privacy Act of 1974, as amended, the records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or

other assignment for the Federal Government when necessary to accomplish an agency function related to this System of Records.

b. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

c. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

d. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

e. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

f. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

g. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the System of Records; (2) the DoD determined as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

h. To another Federal agency or Federal entity, when the DoD determines information from this System of Records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Electronic storage media.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Full name and DoD ID number.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Disposition pending. Treat records as permanent until the National Archives and Records Administration approves the proposed retention and disposition schedule.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

In-depth physical, technical, and administrative controls have been established to safeguard electronic data. Records are protected in accordance with policies in DoDI 8510.01, DoD Risk Management Framework for DoD Information Technology. The system is maintained in controlled facilities that employ physical restrictions and safeguards such as security guards, identification badges, key cards, and locks. The facilities are accessible only to authorized personnel with a need-to-know. The CRRD utilizes a layered network security approach including, firewalls, host based intrusion detection, data in transit encryption, and encryption for data at rest. Access to personal data is limited to person(s) responsible for maintaining and servicing data in performance of their official duties and are properly trained, screened and cleared for a need-to-know. Access to personal data is further restricted by encryption and the use of Common Access Card. Users are required to successfully undergo and complete a National Agency Check with Inquiries along with a credit check. Role-based access to the system is managed by Army G–1 access control procedures and policies. All aspects of privacy, security, configuration, operations, data retention, and disposal are documented to ensure privacy and security are consistently enforced and maintained.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves, contained in this system should address written inquiries to the SHARP, Ready and Resilient Directorate, 2530 Crystal Drive, 6th Floor, Arlington, VA 22202. Individuals must provide their full name, date of birth, and DoD ID Number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or Commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

**CONTESTING RECORD PROCEDURES:**

The DoD rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the SHARP, Ready and Resilient Directorate, 2530 Crystal Drive, 6th Floor, Arlington, VA 22202. Individuals must provide their full name, date of birth, and DoD ID Number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746 to declare that the information provided in the request for notification is true and correct, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or Commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

May 1, 2014, 79 FR 24690.

[FR Doc. 2020–12651 Filed 6–10–20; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities—Improving Retention of Special Education Teachers and Early Intervention Personnel

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2020 for Personnel Development to Improve Services and Results for Children with Disabilities—Improving Retention of Special Education Teachers and Early Intervention Personnel, Catalog of Federal Domestic Assistance (CFDA) number 84.325P. This notice relates to the approved information collection under OMB control number 1820–0028.

**DATES:**

*Applications Available:* June 11, 2020.

*Deadline for Transmittal of Applications:* August 17, 2020.

*Deadline for Intergovernmental Review:* October 14, 2020.

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Sarah Allen, U.S. Department of Education, 400 Maryland Avenue SW, Room 5160, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–7875. Email: *Sarah.Allen@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The purposes of this program are to (1) help address State-identified needs for personnel preparation in special education, early intervention, related services, and regular education to work with children, including infants and toddlers, and youth with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research, to be successful in serving those children.

*Priorities:* This competition includes one absolute priority and one competitive preference priority. In accordance with 34 CFR 75.105(b)(2)(v), the absolute priority and competitive preference priority are from allowable activities specified in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1462 and 1481).

*Absolute Priority:* For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Improving Retention of Special Education Teachers and Early Intervention Personnel.*

*Background*

Many local educational agencies (LEAs) and early intervention service (EIS) providers face challenges with retention [1] of qualified personnel who serve and support children with disabilities in schools, classrooms, and natural environments under IDEA (Espinoza et al., 2018; IDEA Infant and Toddlers Coordinators Association, 2019). Across all subject areas, national estimates suggest that approximately 8 percent of teachers leave the profession each year, and two-thirds of them leave for reasons other than retirement. Within special education, teacher turnover is estimated to exceed 14 percent annually (Carver-Thomas & Darling-Hammond, 2017). These staffing shortages are costly for the systems faced with repeatedly replacing those who move out of the system or leave the profession. Moreover, low retention rates among special education teachers and early intervention personnel have negative implications for the development, learning, and academic success of infants, toddlers, children, and youth with disabilities (Council for Exceptional Children, 2019). Staff turnover is disruptive to instructional programming and practices, which in turn decreases student learning and achievement (Sutcher et al., 2016).

Efforts to improve retention of special education teachers and early intervention personnel require understanding factors associated with, or contributing to, their decisions to stay, move, or leave the profession. Factors impacting retention consistently include preparation and qualifications, support for new hires, compensation, school or program characteristics, working conditions, and demographic and nonwork influences (Billingsley & Bettini, 2019; Carver-Thomas & Darling-Hammond, 2017; Mason-Williams et al., 2019). Further, policies and practices that research has shown to improve personnel retention include offering service scholarships and loan forgiveness, creating career pathway programs that bring well-prepared candidates into teaching (*e.g.,* ''Grow Your Own'' and teacher cadet programs), establishing teacher residency models in hard-to-staff districts, mentoring and induction for new hires, strengthening school principals' and administrators' understanding of special education, and providing competitive compensation (Billingsley & Bettini, 2019; Carver-Thomas & Darling-Hammond, 2017; Espinoza et al., 2018; Mason-Williams et al., 2019).

Finally, comprehensive strategies to address retention of special education teachers and EIS providers benefit from effective organizational partnerships between relevant stakeholders (Espinoza et al., 2018), including personnel preparation faculty and researchers, parents and families, professional organizations, and practitioners and administrators at the State, regional, and local levels. With the goal of ensuring alignment between preparation programs and the needs of the local systems serving children with disabilities, stronger partnerships bring stakeholders together regularly to share knowledge, address common challenges, and develop enduring relationships around shared goals. By connecting these research findings with available resources from technical assistance centers funded by the Office of Special Education Programs (OSEP), such as *The Educator Shortages in Special Education Toolkit* (Great Teachers and Leaders Center, 2020) and *A System Framework for Building High-Quality Early Intervention and Preschool Special Education Programs* (Early Childhood Technical Assistance Center, 2015), States, regional, and local systems will be better able to develop, implement, evaluate, scale-up, and sustain comprehensive retention plans, resulting in meaningful improvement in retention of special education teachers and early intervention personnel.

Over the past year, OSEP has engaged the field in numerous activities related to attracting, preparing, and retaining

[1] For the purposes of this competition, the term ''retention'' means that special education teachers and early intervention service providers stay in their current position or field serving children with disabilities.

effective personnel and received considerable feedback that State educational agencies (SEAs) and Part C lead agencies would benefit from investments that support their efforts to improve retention. The proposed investment under the absolute priority would fund efforts by SEAs or Part C lead agencies, in collaboration with LEAs or EIS providers, to plan, implement, evaluate, scale-up, and sustain a comprehensive retention plan that uses evidence-based policies and practices to address factors contributing to low retention in these systems. This priority is consistent with the Secretary's Supplemental Priority 5: Meeting the Unique Needs of Students and Children with Disabilities and/or Those with Unique Gifts and Talents; and Supplemental Priority 8: Promoting Effective Instruction in Classrooms and Schools.

The projects must be awarded and operated in a manner consistent with nondiscrimination requirements contained in the U.S. Constitution and the Federal civil rights laws.

*Priority*

The purpose of this priority is to fund grants to achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of State, regional, and local systems to develop, implement, evaluate, scale-up, and sustain comprehensive retention plans that use evidence-based policies and practices to address identified factors contributing to low retention of special education teachers and early intervention personnel. Such a plan might include mentorship or induction programs, career pathways programs, recognition and incentive programs, competitive compensation, service scholarships, or student loan repayment for continued service.

(b) Increased capacity of State, regional, and local systems to evaluate their comprehensive retention plans and how the plans are implemented.

(c) Increased capacity of State, regional, and local systems to effectively partner with a broad range of stakeholder groups—including, but not limited to, the business community, personnel preparation programs at institutions of higher education (IHEs), parent training and information centers [2] (PTIs), and other community-based organizations—needed to develop, implement, evaluate, scale-up, and sustain comprehensive retention plans that improve retention of special education teachers and early intervention personnel.

(d) Improved retention of special education teachers and early intervention personnel.

To be considered for funding under this priority, all applicants must meet the application requirements contained in the priority. All projects funded under this absolute priority also must meet the programmatic and administrative requirements specified in the priority.

**Note:** OSEP intends to fund projects that address retention of special education teachers and early intervention personnel. OSEP may fund high-quality applications out of rank order to ensure that projects are funded across both SEAs and Part C lead agencies.

**Note:** An applicant may submit an application that addresses retention of special education teachers or an application that addresses retention of early intervention personnel. An applicant may submit one application that addresses retention of both special education teachers and early intervention personnel. If addressing the retention of both special education teachers and early intervention personnel, the application must address all application requirements for each system.

**Note:** To be reviewed and be considered eligible to receive an award, applicants must demonstrate matching support for the proposed project at 10 percent of the total amount of the grant as specified in paragraph (f)(1) of the application requirements of this priority.

To meet the requirements of this priority, an applicant must—

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address the State, regional, or local need to retain special education teachers or early intervention personnel across the career continuum and at every level of experience. To meet this requirement, the applicant must—

(i) Present applicable State, regional, or local data demonstrating the current and projected number and percentage of special education teachers or early intervention personnel leaving their current positions (disaggregated, to the extent possible, by those retiring and those leaving for other reasons, such as promotion, moving to general education, or leaving the field);

(ii) Present applicable State, regional, or local data demonstrating the impact of teachers or early intervention personnel leaving their systems such as impacts on fiscal or academic outcomes; and

(iii) Describe factors contributing to special education teachers or early intervention personnel leaving their systems; and

(2) Address the need for improved infrastructure and partnerships with a broad range of stakeholder groups to retain special education teachers or early intervention personnel. To meet this requirement, the applicant must—

(i) Describe current State, regional, and local strategies that have been used or are being used to improve retention of special education teachers or early intervention personnel;

(ii) Describe the impact of implementing the strategies identified in paragraph (a)(2)(i) of this section;

(iii) Describe the changes in State, regional, and local infrastructure (*e.g.,* governance, finance, personnel, coordination, data, and accountability and improvement) needed to improve retention of special education teachers or early intervention personnel;

(iv) Describe the collaborative relationships with a broad range of stakeholder groups that need to be strengthened or established to improve retention of special education teachers or early intervention personnel; and

(v) Describe the likely magnitude or importance of retaining more special education teachers or early intervention personnel at State, regional, and local levels.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model [3] by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals,

[2] For the purpose of this priority, the term ''parent training and information centers'' means OSEP-funded parent training and information centers that serve parents of children of all ages (birth to 26) and all types of disabilities. Discretionary grants are awarded only to parent organizations as defined by IDEA under CFDA 84.328. For more information, including centers located in each State and territory, see *www.parentcenterhub.org/find-your-center/*.

[3] ''Logic model'' (34 CFR 77.1) (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

**Note:** The following websites provide more information on logic models and conceptual frameworks: *www.osepideasthatwork.org/logicModel* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Use up to the first 12 months of the project period to develop a comprehensive retention plan, or a plan to evaluate, scale-up, and sustain an existing comprehensive retention plan, that uses evidence-based policies and practices that address identified factors contributing to low retention to retain special education teachers or early intervention personnel. To meet this requirement, the applicant must include—

(i) Its proposed plan to collect and analyze additional data, as appropriate, to understand the factors, including policies and practices, contributing to low retention of special education teachers or early intervention personnel at the State, regional, and local levels;

(ii) The current and additional evidence-based policies and practices that will guide the development of the comprehensive retention plan or the plan to scale-up an already existing comprehensive retention plan, and the proposed process the applicant will use to address the identified factors contributing to low retention;

(iii) Its proposed process for identifying LEAs or EIS providers that the State will partner with to develop comprehensive retention plans, or plan to scale-up already existing comprehensive retention plans, to improve the retention of special education or early intervention personnel. The applicant should indicate the extent to which the poverty level of youth served, geography (*e.g.,* rural, urban) or other demonstrated needs (*e.g.,* staff shortages, historic pattern of high turnover rates) will factor into its process for identifying LEAs or EIS providers to partner with; and

(iv) Its proposed plan for identifying and establishing meaningful partnerships, as appropriate, with a broad range of stakeholder groups, including but not limited to the business community, IHEs, PTIs, and other community-based organizations, necessary to successfully develop a comprehensive retention plan, or to evaluate, scale-up, and sustain existing comprehensive retention plans;

(5) Implement, scale-up, and sustain a comprehensive retention plan that uses evidence-based policies and practices to address identified factors contributing to low retention of special education teachers or early intervention personnel. To meet this requirement, the applicant must include its approach to—

(i) Ensure an infrastructure (*e.g.,* governance, finance, personnel, data, and accountability and improvement) is in place to implement the comprehensive retention plan at the State, regional, or local level;

(ii) Establish additional partnerships, as needed, including agreements that outline responsibilities, sharing of resources, and decision-making and communication processes among all partners;

(iii) Recruit LEAs or EIS providers to partner with to implement, evaluate, scale-up, and sustain the comprehensive recruitment plan. To meet this requirement, the applicant must include—

(A) The proposed process for identifying LEAs or EIS providers that the State will partner with to implement, evaluate, scale-up, and sustain the comprehensive retention plan, and expectations for participation, which must include the data that partners will need to be collected to demonstrate progress in implementing the comprehensive retention plan; and

(B) The proposed process the applicant will use to identify additional LEAs or EIS providers that it will partner with in years four and five if the project period is extended; and

(iv) The proposed process the applicant will use to sustain the comprehensive retention plan once Federal support ends; and

(6) Disseminate information on the effectiveness of evidence-based policies and practices used within the comprehensive retention plan and the impact of implementing the plan to other SEAs and LEAs or Part C lead agencies and local service providers to support other systems in increasing the retention of special education teachers or early intervention personnel.

(c) Demonstrate, in the narrative section of the application under ''Quality of the project evaluation,'' how—

(1) The applicant will use comprehensive and appropriate methodologies to evaluate how well the goals or objectives of the proposed project have been met, including project processes and intended outcomes. The applicant must describe performance measures for the project that include retention rates for special education teachers or early intervention personnel; and

(2) The applicant will collect, analyze, and use data related to specific and measurable goals, objectives, and intended outcomes of the project. To meet this requirement, the applicant must describe how—

(i) Retention of special education teachers or early intervention personnel and other project processes and outcomes will be measured for formative evaluation purposes, including proposed instruments, data collection methods, and proposed analyses;

(ii) Proposed evaluation methods will provide performance feedback that allows for periodic assessment of progress towards meeting the project outcomes;

(iii) Results of the evaluation will be used as a basis for improving the proposed project; and

(iv) Evaluation results will be reported to OSEP in its annual and final performance reports.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To meet this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed project will benefit from a diversity of perspectives, including those of individuals with disabilities, families of students with disabilities, administrators, teachers and personnel, faculty, technical assistance and professional development providers, PTIs, researchers, business leaders, and policymakers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Demonstrate, in the budget information (ED Form 524, Section B) and budget narrative, matching support for the proposed project at 10 percent of the total amount of the grant;

**Note:** Matching support can be either cash or in-kind donations. Under 2 CFR 200.306, a cash expenditure or outlay of cash with respect to the matching budget by the grantee is considered a cash contribution. However, certain cash contributions that the organization normally considers an indirect cost should not be counted as a direct cost for the purposes of meeting matching support. Specifically, in accordance with 2 CFR 200.306(c), unrecovered indirect costs cannot be used to meet the non-Federal matching support. Under 2 CFR 200.434, third-party in-kind contributions are services or property (*e.g.,* land, buildings, equipment, materials, supplies) that are contributed by a non-Federal third party at no charge to the grantee.

The Secretary does not, as a general matter, anticipate waiving this requirement in the future. Furthermore, given the importance of cost share or matching funds to the long-term success of the project, eligible entities must identify appropriate cost share or matching funds in the proposed three-year budget.

(2) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative; and

(3) Include, in the budget, attendance at a two- and one-half day meeting in conjunction with either the OSEP project directors' conference or the OSEP leadership conference in Washington, DC, during each year of the project period.

*Fourth and Fifth Year of Project*

The Secretary may extend a project two years beyond the initial 36 months if the grantee is achieving the intended outcomes of the project (as demonstrated by data gathered as part of the project evaluation). Each applicant must include in its application a plan and a budget for the full 60-month period. In deciding whether to extend funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) and will consider the success and timeliness with which the intended outcomes of the project requirements have been or are being met by the project.

*Competitive Preference Priority:* Within this absolute priority, we give competitive preference to applications that address the following competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award up to an additional 5 points to an application, depending on how well the application meets the competitive preference priority.

This priority is:

*Matching Support (Up to 5 points).*

An application that demonstrates matching support for the proposed project at—

(a) 20 percent of the requested Federal award (1 point);

(b) 40 percent of the total amount of the requested Federal award (2 points);

(c) 60 percent of the total amount of the requested Federal award (3 points);

(d) 80 percent of the total amount of the requested Federal award (4 points); or

(e) 100 percent of the total amount of the requested Federal award (5 points).

Applicants must address this competitive preference priority in the budget information (ED Form 524, Section B) and budget narrative.

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IDEA Infant and Toddler Coordinators Association. (2019). *2019 Tipping points annual survey: State challenges. www.ideainfanttoddler.org/pdf/2019–ITCA-State-Challenges-Report.pdf.*

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Sutcher, L., Darling-Hammond, L., & Carver-Thomas, D. (2016). A coming crisis in teaching? Teacher supply, demand, and shortages in the U.S. Learning Policy Institute. *https://learningpolicyinstitute.org/product/coming-crisis-teaching.*


*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

*Program Authority:* 20 U.S.C. 1462 and 1481.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 304.

**Note:** The regulations in 34 CFR part 86 apply to IHEs only.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $4,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2021 from the list of unfunded applications from this competition.

*Estimated Range of Awards:* $700,000–$750,000.

*Estimated Average Size of Awards:* $725,000.

*Maximum Award:* We will not make an award exceeding $750,000 for a

project period of 36 months for applications addressing the retention of either special education teachers or early intervention personnel. We will not make an award exceeding $1,500,000 for a project period of 36 months for applications addressing retention of both special education teachers and early intervention personnel.

**Note:** Applicants must describe, in their applications, the amount of funding being requested for each 12-month budget period.

*Estimated Number of Awards:* 16.
*Project Period:* Up to 36 months.

**Note:** The Department is not bound by any estimates in this notice.

## III. Eligibility Information

1. *Eligible Applicants:* SEAs and Part C lead agencies are the only eligible applicants.

2. *Cost Sharing or Matching:* Cost sharing or matching is required for this competition.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application. Under 34 CFR 75.708(e), a grantee may contract for supplies, equipment, and other services in accordance with 2 CFR part 200.

4. *Other General Requirements:* (a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

## IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application. *Grants.gov* has relaxed the requirement for applicants to have an active registration in the System for Award Management (SAM) in order to apply for funding during the COVID–19 pandemic. An applicant that does not have an active SAM registration can still register with *Grants.gov*, but must contact the *Grants.gov* Support Desk, toll-free, at 1–800–518–4726, in order to take advantage of this flexibility.

2. Intergovernmental Review: This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. Funding Restrictions: We reference regulations outlining funding restrictions in the Applicable Regulations section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 50 pages if addressing retention of either special education teachers or early intervention personnel or 90 pages if addressing retention of both special education teachers and early intervention personnel in one application and (2) use the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (15 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of project services (35 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(iv) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(v) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(c) *Quality of the project evaluation (20 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(iii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(d) *Adequacy of resources and quality of project personnel (15 points).*

(1) The Secretary considers the adequacy of resources and quality of project personnel for the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(iii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (15 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of

this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* We have established the following performance measures for this grant program (84.325P):

(a) Number and percent of special education teachers and early intervention service providers that participated in project-funded activities that are retained in their current position, or continuing to primarily serve children with disabilities in early intervention or school settings; and

(b) Retention rate for special education teachers or EIS providers at the State, regional, or local system level that participated in project-funded activities compared to the historical retention of providers in the same State, regional, or local system(s) in years prior to participation in the proposed project.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Mark Schultz,**

*Commissioner, Rehabilitation Services Administration, Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.*

[FR Doc. 2020–12583 Filed 6–10–20; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No. ED–2020–SCC–0089]**

## Agency Information Collection Activities; Comment Request; Foreign Institution Reporting Requirements Under the CARES Act

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before August 10, 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–0089. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Foreign Institution Reporting Requirements under the CARES Act.

*OMB Control Number:* 1845–0161.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* Private Sector; State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 804.

*Total Estimated Number of Annual Burden Hours:* 402.

*Abstract:* Section 3510(a) of the CARES Act, Public Law 116–136 (March 27, 2020), authorizes the Secretary of Education (''Secretary'') to permit a foreign institution, in the case of a public health emergency, major disaster or emergency, or national emergency declared by the applicable government authorities in the country in which the foreign institution is located, to provide any part of an otherwise eligible program to be offered via distance education for the duration of such emergency or disaster and the following payment period for purposes of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*). Additionally, under Section 3510(d) of the CARES Act, the Secretary may allow a foreign institution to enter into a written arrangement with an institution of higher education located in the United States that participates in the Federal Direct Loan Program under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a *et seq.*) for the purpose of allowing a student of the foreign institution who is a borrower of a loan made under such part to take courses from the institution of higher education located in the United States.

Dated: June 5, 2020.

**Kate Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.*

[FR Doc. 2020–12613 Filed 6–10–20; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### National Nuclear Security Administration

### Notice of Availability of the Report on the Secretary of Energy's Final Decision and Supporting Reasoning Regarding Defense Nuclear Facilities Safety Board Recommendation 2019–2, *Safety of the Savannah River Site Tritium Facilities*

**AGENCY:** National Nuclear Security Administration, Department of Energy.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of Energy's National Nuclear Security Administration (NNSA) announces the availability of a Report on the Secretary of Energy's Final Decision and Supporting Reasoning Regarding Defense Nuclear Facilities Safety Board Recommendation 2019–2, *Safety of the Savannah River Site Tritium Facilities.* The Board issued Recommendation 2019–2 on June 11, 2019. The Recommendation focused on the Department of Energy (DOE) actions to improve the safety of the Tritium Facilities, upgrades to safety management programs, and the implementation of robust controls to prevent very high radiation doses, creating the potential for acute radiation sickness or fatality in a significant number of individuals. The Recommendation identified three specific sub-recommendations.

**DATES:** This notice will be published on June 11, 2020.

**ADDRESSES:** This report, together with its attachments, documents the Secretary of Energy's final decision and supporting reasoning regarding Defense Nuclear Facilities Safety Board (DNFSB or Board) Recommendation 2019–2, *Safety of the Savannah River Site Tritium Facilities.*

**FOR FURTHER INFORMATION CONTACT:** For further information about this Notice, please contact Ms. Nicole Nelson-Jean, Manager of the Savannah River Field Office, U.S. Department of Energy, National Nuclear Security Administration, Savannah River Field Office, P.O. Box A, Aiken, South Carolina 29802; phone: 803–208–3689; email to: *Nicole.Nelson-Jean@nnsa.srs.gov.*

**SUPPLEMENTARY INFORMATION:** As explained in detail in the Department's September 10, 2019, response to the Recommendation (the text of which is included as Attachment 1 to this report), the Department of Energy's National Nuclear Security Administration (DOE/NNSA) Administrator stated that DOE/NNSA's safety programs and policies, and their effective implementation by its well trained workforce, provide reasonable assurance of adequate protection of public health and safety. In addition, focused ongoing actions at the Tritium Facilities adequately address DNFSB concerns outlined in Recommendation 2019–2 and make the need for additional actions in response to the DNFSB Recommendation unnecessarily duplicative of that effort, and would therefore, detract from our continued progress. The Administrator's response, on behalf of the Secretary of Energy, constituted a full non-acceptance of the Recommendation.

Per 42 United States Code Section 2286d paragraph (e), *Board Recommendations,* when the Secretary of Energy does not fully accept a Recommendation, the Board must either reaffirm or revise the recommendation, and the Secretary of Energy must then consider the Board's action and make a final decision on whether to implement all or part of the Board's recommendations. Subject to subsection (i) of the section, the Secretary shall publish the final decision and the reasoning for such decision in the **Federal Register** and shall transmit to the Committees on Armed Services, Appropriations, and Energy and Commerce of the House of Representatives and the Committees on Armed Services, Appropriations, and Energy and Natural Resources of the Senate a written report containing that decision and reasoning.

The Board reaffirmed the Recommendation in a letter to the Secretary of Energy on December 5, 2019. In the letter, the Board provided the following context to support the Board's Recommendation:

''In rejecting Recommendation 2019–2, DOE presented several actions and plans in its September 10, 2019, letter and during the briefing on October 28, 2019, as addressing our concerns. We acknowledge that these ongoing and planned actions are aimed at addressing issues identified in Recommendation 2019–2. However, we are concerned these actions will not, in the near term or long term, fully address the high consequences to workers. Further, we do not agree that ongoing actions and plans obliviate the need for Recommendation 2019–2.''

The Board's December 5, 2019, letter does not provide any new substantive information and reaffirms its original recommendation without changing it. The Board's reaffirmation ignores the reasoning and analysis underlying the DOE/NNSA position and incorrectly asserts that the disagreement has to do with Board's authority rather than the Board's analysis.

In a letter dated January 3, 2020, the DOE/NNSA Administrator reaffirmed, on behalf of the Secretary, the Department's September 10, 2019, response as the Secretary's final decision regarding Recommendation 2019–2 (the text of which is included as Attachment 2 to the attached report).

The current Tritium Facilities' documented safety analysis contains appropriate safety significant controls, along with continuous improvement efforts and a new documented safety analysis. These efforts are nearing completion and will strengthen the safety posture at the Tritium Facilities. The planned Tritium Finishing Facility, included in the President's Fiscal Year 2020 Budget Request, will fundamentally improve safety at Savannah River Site (SRS), as DOE/NNSA moves from the H-Area Old Manufacturing (HAOM) Facility to this new seismically-qualified facility. Furthermore, the SRS Emergency Management Program has demonstrated steady and significant improvement over the past several years and continues to provide adequate protection to the workforce and the public surrounding the SRS.

DOE/NNSA has already initiated, and in some cases completed, the actions the DNFSB recommends; the SRS tritium operations are providing adequate protection of public and additionally, workforce safety. Many significant long-term projects to enhance safety in SRS tritium operations are nearing completion. Notably, the ongoing major construction project to replace the HAOM Tritium Facilities with new, modern, and robust facilities is being supported by the Department and Congress.

These activities are significant and are the proper implementation of DOE/NNSA safety improvements at SRS. Therefore, DOE/NNSA concludes that the most efficient, effective, and quickest way to improve safety at the SRS Tritium Facilities is to continue with the current approach and path forward. As previously noted, DOE/NNSA actions and plans that would have responded to this recommendation are complete or underway and therefore, are considered to have met the issues highlighted in the recommendation.

**Signing Authority**

This document of the Department of Energy was signed on April 6, 2020, by Lisa E. Gordon-Hagerty, Under Secretary for Nuclear Security Administrator, National Nuclear Security Administration, 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 June 8, 2020.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

[FR Doc. 2020–12638 Filed 6–10–20; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP20–477–000]**

### Spire Storage West, LLC; Notice of Request Under Blanket Authorization

Take notice that on June 4, 2020, Spire Storage West, LLC (Spire Storage), 3773 Richmond Avenue, Suite 300, Houston, TX 77046, filed in the above referenced docket, a prior notice request pursuant to §§ 157.205 and 157.213(b) of the Commission's regulations under the Natural Gas Act (NGA) and Spire Storage's blanket certificate issued in Docket No. CP11–24–000, for authorization to install one compressor unit and related equipment; relocate one natural gas liquids tank, two condensate tanks, and NGL and condensate truck load-out facilities and to replace two existing fuel supply tanks. The project, referred to as the Compression at Clear Creek Project, is located adjacent to Spire Storage's existing central gas handling facility at its Clear Creek Storage Field in Uinta County, Wyoming. Details of Spire Storage's Compression at Clear Creek Project is more fully set forth in the application which is on file with the Commission and open to public inspection. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this prior notice request should be directed to Sean P. Jamieson, General Counsel, Spire Storage West LLC, 3773 Richmond Avenue, Suite 300, Houston, TX 77046, phone: (346) 308–7555 or email: *StorageLegal@spireenergy.com* or Damien R. Lyster, Vinson & Elkins LLP, 1001 Fannin Street, Suite 2500, Houston, TX 77002, phone: 713–758–2025 or email: *dlyster@velaw.com.*

Any person or the Commission's staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene, or the Commission's staff may, pursuant to § 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to § 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website (*http://www.ferc.gov*) under the ''e-Filing'' link.

Dated: June 5, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–12640 Filed 6–10–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD20–17–000]**

### Impacts of COVID–19 on the Energy Industry; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in this proceeding on May 20, 2020, the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference in the above-referenced proceeding on Wednesday and Thursday, July 8–9, 2020, from approximately 9:00 a.m. to 5:00 p.m. Eastern time each day. The conference will be held electronically. The purpose of this conference is to consider the ongoing, serious impacts that the emergency conditions caused by COVID–19 are having on various segments of the United States' energy industry. The Commission will explore the potential longer-term impacts on the entities that it regulates in order to ensure the continued efficient functioning of energy markets, transmission of electricity, transportation of natural gas and oil, and reliable operation of energy infrastructure today and in the future, while also protecting consumers. The conference will serve as a public forum for the Commission and energy stakeholders to discuss a wide range of energy issues that the country faces going forward as it recovers from the emergency conditions created by, and the impacts of, COVID–19.

The Commission will issue a further supplemental notice with an agenda that includes a list of panelists for the technical conference. The conference will be open for the public to attend electronically. There is no fee for attendance. However, members of the public are encouraged to preregister online at: *http://www.ferc.gov/whats-new/registration/07-07-20-form.asp.* Information on this event will be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event. The conference will be transcribed. Transcripts will be available for a fee from Ace Reporting (202–347–3700).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

For more information about this technical conference, please contact:

Aileen Roder (Technical Information), Office of Energy Policy and Innovation, (202) 502–6735, *aileen.roder@ferc.gov*.

Zeny Magos (Technical Information), Office of Energy Market Regulation, (202) 502–8244, *zeny.magos@ferc.gov*.

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *sarah.mckinley@ferc.gov*.

Dated: June 5, 2020.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2020–12639 Filed 6–10–20; 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 corporate filings:

*Docket Numbers:* EC20–71–000.

*Applicants:* GenOn California South, LP, Ormond Beach Power, LLC, Ellwod Power, LLC.

*Description:* Application for Authorization Under Section 203 of the Federal Power Act, et al. of GenOn California South, LP, et al.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5175.

*Comments Due:* 5 p.m. ET 6/26/20.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG20–180–000.

*Applicants:* Assembly Solar I, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Assembly Solar I, LLC.

*Filed Date:* 6/4/20.

*Accession Number:* 20200604–5156.

*Comments Due:* 5 p.m. ET 6/25/20.

*Docket Numbers:* EG20–181–000.

*Applicants:* American Electric Power Service Corporation.

*Description:* Clyde OnSite Generation, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5121.

*Comments Due:* 5 p.m. ET 6/26/20.

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

*Docket Numbers: ER10–2390–005;* ER19–784–001; ER10–2394–006; ER12–1563–006; ER10–2395–006; ER10–2422–007; ER12–1562–006; ER11–3642–019.

*Applicants:* Bicent (California) Malburg LLC, Big Country Datalec LLC, BIV Generation Company, L.L.C., Cayuga Operating Company, LLC, Colorado Power Partners, Rocky Mountain Power, LLC, Somerset Operating Company LLC, Tanner Street Generation, LLC.

*Description:* Supplement to February 5, 2020 Notice of Non-Material Change in Status of Bicent (California) Malburg LLC, et. al.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5077.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER19–211–002.

*Applicants:* Entergy Arkansas, LLC, Entergy Louisiana, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, Entergy Texas, Inc., Entergy Arkansas, Inc.

*Description:* Compliance filing: TCCs JOOA eTariff Compliance to be effective 4/30/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5050.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER19–1916–003.

*Applicants:* Louisville Gas and Electric Company.

*Description:* Compliance filing: Order 845 and 845–A Amended Compliance Filing to be effective 5/22/2019.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5031.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–1736–001.

*Applicants:* Versant Power.

*Description:* Compliance filing: Changes to Attachment J—Formula Rates (Amended ER20–1736) per Order No. 864 to be effective 6/1/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5011.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–1992–000.

*Applicants:* Public Service Company of New Mexico.

*Description:* Compliance filing: Order No. 864 Compliance Filing to be effective 1/27/2020.

*Filed Date:* 6/4/20.

*Accession Number:* 20200604–5130.

*Comments Due:* 5 p.m. ET 6/25/20.

*Docket Numbers:* ER20–1993–000.

*Applicants:* Duke Energy Progress, LLC.

*Description:* § 205(d) Rate Filing: DEP—French Broad EMC—Wholesale Contract Revisions to Rate Schedule No. 210 to be effective 6/1/2020.

*Filed Date:* 6/4/20.

*Accession Number:* 20200604–5145.

*Comments Due:* 5 p.m. ET 6/25/20.

*Docket Numbers:* ER20–1994–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 4123, Non-Queue #NQ115 to be effective 6/2/2015.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5021.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–1995–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2020–06–05_SA 3364 NIPSCO-Indiana Crossroads Wind Farm 1st Rev GIA (J837 J838) to be effective 5/21/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5032.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–1996–000.

*Applicants:* Assembly Solar I, LLC.

*Description:* Baseline eTariff Filing: Baseline New to be effective 8/5/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5039.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–1997–000.

*Applicants:* Cheyenne Light, Fuel and Power Company.

*Description:* Compliance filing: Order No. 864 Compliance Filing to be effective 1/27/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5048.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–1998–000.

*Applicants:* Assembly Solar I, LLC.

*Description:* § 205(d) Rate Filing: COC filing to be effective 8/5/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5056.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–1999–000.

*Applicants:* Duke Energy Progress, LLC.

*Description:* § 205(d) Rate Filing: DEP-Haywood Wholesale Contract Revisions to Rate Schedule No. 180 to be effective 6/1/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5068.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–2000–000.

*Applicants:* Clyde Onsite Generation, LLC.

*Description:* Baseline eTariff Filing: MBR Authority Application to be effective 7/1/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5089.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–2001–000.

*Applicants:* ISO New England Inc.

*Description:* Informational Filing Regarding Additional Conditions to applicant for participation in the New England Markets of ISO New England Inc.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5147.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–2002–000.

*Applicants:* Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: MAIT submits ECSA No. 5881 to be effective 8/4/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5156.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–2003–000.

*Applicants:* American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: ATSI submits ECSA No. 5882 to be effective 8/4/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5163.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–2004–000.

*Applicants:* Public Service Electric and Gas Company, PJM Interconnection, L.L.C.

*Description:* Compliance filing: PSEG submits Revisions to PJM Tariff, Att. H–10 re: Order 864 to be effective 1/27/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5179.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–2005–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2020–06–05_Intermittent Deliverable ICAP Filing to be effective 8/19/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5189.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–2006–000.

*Applicants:* Duke Energy Progress, LLC.

*Description:* § 205(d) Rate Filing: DEP-Camden Wholesale Contract Revisions to Rate Schedule No. 197 to be effective 6/1/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5196.

*Comments Due:* 5 p.m. ET 6/26/20.

*Docket Numbers:* ER20–2007–000.

*Applicants:* San Diego Gas & Electric Company.

*Description:* § 205(d) Rate Filing: Black Start 2nd Amended and Restated Agreement to be effective 8/4/2020.

*Filed Date:* 6/5/20.

*Accession Number:* 20200605–5202.

*Comments Due:* 5 p.m. ET 6/26/20.

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

Any person desiring to intervene or protest in any of the above proceedings

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

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

Dated: June 5, 2020.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–12635 Filed 6–10–20; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R08–OPPT–2020–0013; FRL–10010–17–Region 8]**

## Proposed Information Collection Request; Comment Request; Environmental Protection Agency (EPA) Pollution Prevention (P2) Awards Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA), Pollution Prevention (P2) Awards Program is planning to submit an information collection request (ICR), Environmental Protection Agency (EPA) Pollution Prevention (P2) Awards Program (EPA ICR No.: 2614.01, OMB Control No. 2008—NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. An Agency may not conduct, or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before August 10, 2020.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–R08–OPPT–2020–0013, online using *www.regulations.gov* (our preferred method), or by email to *payan.melissa@epa.gov.* EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Melissa Payan, EPA R8 Land, Chemical and Redevelopment Division Pollution Prevention Program, (8LCR–CES), Environmental Protection Agency R8, 1595 Wynkoop St. Denver, CO 80202; telephone number: 303–312–6511; email address: *payan.melissa@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** document to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* EPA's Pollution Prevention (P2) Program is a voluntary program that encourages businesses/facilities to adopt P2 projects that reduces both financial costs (waste management and cleanup) and environmental costs (health problems and environmental damage). In passing the Pollution Prevention Act (PPA) in 1990, Congress found that there are significant opportunities for industry to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use. Such changes offer industry substantial savings in reduced raw material, pollution control, and liability costs as well as help protect the environment and reduce risks to worker health and safety. 42 U.S.C. 13101(a)(2). Furthermore, the PPA states the Administrator shall ''establish an annual award program to recognize a company or companies which operate outstanding or innovative source reduction programs'' (PPA section 6604) 42 U.S.C. 13103(b)(13). The EPA P2 Awards Program is an annual, voluntary, and non-monetary awards program that will recognize companies that demonstrate leadership in innovative P2 practices and encourage other entities to consider P2 approaches. This ICR may be applicable to HQ, as well as any of the 10 Regional Offices that choose to participate and implement a P2 Awards Program.

*Form numbers:* EPA P2 Award Program Application—5800–005.

*Respondents/affected entities:* Intended Respondents include various types of businesses from all North American Industry Classification System (NAICS) codes. However, businesses need to be from a state in an EPA Region implementing this awards program.

*Respondent's obligation to respond:* Respondents are not obligated to respond. This is done on a voluntary basis.

*Estimated number of respondents:* Approximately 5–10 per region (total).

*Frequency of response:* Annually on a voluntary basis.

*Total estimated burden:* 19.5 hours per respondent (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $1,804.83 per respondent (per year), includes $0 annualized capital or operation & maintenance costs.

*Changes in estimates:* Not applicable at this time.

Dated: May 29, 2020.

**Gregory Sopkin,**

*Regional Administrator, EPA Region 8.*

[FR Doc. 2020–12636 Filed 6–10–20; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK

**[Public Notice: EIB–2020–002]**

### Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP089331XX

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice.

**SUMMARY:** This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''EXIM''), that EXIM has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the EXIM Board of Directors prior to final action on this Transaction.

**DATES:** Comments must be received on or before July 6, 2020 to be assured of consideration before final consideration of the transaction by the Board of Directors of EXIM.

**ADDRESSES:** Comments may be submitted through *Regulations.gov* at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2020–002 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2020–002 on any attached document.

*Reference:* AP089331XX.

*Purpose and Use:*

*Brief description of the purpose of the transaction:* To support the export of U.S.-manufactured commercial aircraft to Turkey.

*Brief non-proprietary description of the anticipated use of the items being exported:* To be used for passenger air transport between Turkey and Africa, the United States, Europe, and Asia, including Japan, Singapore, and Malaysia.

To the extent that EXIM is reasonably aware, the items being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

*Parties:*

Principal Supplier: The Boeing Company.

Obligor: Turk Hava Yollari A.O.

Guarantor(s): N/A.

*Description of Items Being Exported:* Boeing 787 aircraft.

*Information on Decision:* Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://exim.gov/newsandevents/boardmeetings/board/*

*Confidential Information:* Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

**Kita L. Hall,**

*Program Specialist.*

[FR Doc. 2020–12648 Filed 6–10–20; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[GN Docket No. 18–122, DA 20–586; FRS 16829]**

### Wireless Telecommunications Bureau Seeks Comment on Optional Lump Sum Payments for 3.7–4.2 GHz Band Incumbent Earth Station Relocation Expenses

*Correction*

In notice document 2020–12493 appearing on pages 35086–35088 in the issue of Monday, June 8, 2020, make the following correction:

On page 35086, in the second column, in the **DATES** section, ''June 16, 2020'' should read ''June 15, 2020''.

[FR Doc. C1–2020–12493 Filed 6–10–20; 8:45 am]

**BILLING CODE 1300–01–D**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request; Voluntary Customer Survey Generic Clearance for the Agency for Healthcare Research and Quality

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*Voluntary Customer Survey Generic Clearance for the Agency for Healthcare Research and Quality*.''

**DATES:** Comments on this notice must be received by 60 days after publication of this notice.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Proposed Project**

*Voluntary Customer Survey Generic Clearance for the Agency for Healthcare Research and Quality*

This is a request for the Office of Management and Budget (OMB) to re-approve for an additional three years, under the Paperwork Reduction Act of 1995, the generic clearance for the Agency for Healthcare Research and Quality (AHRQ) to survey the users of AHRQ's work products and services, OMB control number 0935–0106. The current clearance was approved on December 13, 2017 and will expire on December 31, 2020.

Customer surveys will be undertaken by AHRQ to assess its work products and services provided to its customers, to identify problem areas, and to determine how they can be improved. Surveys conducted under this generic clearance are not required by regulation and will not be used by AHRQ to regulate or sanction its customers. Surveys will be entirely voluntary, and information provided by respondents will be combined and summarized so that no individually identifiable information will be released. Proposed information collections submitted under this generic clearance will be reviewed and acted upon by OMB within 14 days of submission to OMB.

**Method of Collection**

The information collected through focus groups and voluntary customer surveys will be used by AHRQ to identify strengths and weaknesses in products and services to make improvements that are practical and feasible. Information from these customer surveys will be used to plan and redirect resources and efforts to improve or maintain a high quality of service to the lay and health professional public.

**Estimated Annual Respondent Burden**

Exhibit 1 shows the estimated total burden hours for the respondents. Mail surveys are estimated to average 15 minutes, telephone surveys 40 minutes, web-based surveys 10 minutes, focus groups two hours, and in-person interviews are estimated to average 50 minutes. Mail surveys may also be sent to respondents via email, and may include a telephone non-response follow-up. Telephone non-response follow-up for mailed surveys does not count as a telephone survey. The total burden hours for the three years of the clearance is estimated to be 10,900 hours.

Exhibit 2 shows the estimated cost burden for the respondents. The total cost burden for the three years of the clearance is estimated to be $136,031.

EXHIBIT 1—ESTIMATED BURDEN HOURS OVER THREE YEARS

| Type of information collection | Number of respondents | Number of responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Mail/email * | 5,000 | 1 | 15/60 | 1,250 |
| Telephone | 200 | 1 | 40/60 | 133 |
| Web-based | 5,000 | 1 | 10/60 | 833 |
| Focus Groups | 500 | 1 | 2.0 | 1,000 |
| In-person | 200 | 1 | 50/60 | 167 |
| Total | 10,900 | na | na | 3,383 |

* May include telephone non-response follow-up in which case the burden will not change.

EXHIBIT 2—ESTIMATED COST BURDEN OVER THREE YEARS

| Type of information collection | Number of respondents | Total burden hours | Average hourly wage rate * | Total cost burden |
|---|---|---|---|---|
| Mail/email | 5,000 | 1,250 | $40.21 | $50,263 |
| Telephone | 200 | 133 | 40.21 | 5,348 |
| Web-based | 5,000 | 833 | 40.21 | 33,495 |
| Focus Groups | 500 | 1,000 | 40.21 | 40,210 |
| In-person | 200 | 167 | 40.21 | 6,715 |
| Total | 10,900 | 3,383 | 40.21 | 136,031 |

* Bureau of Labor & Statistics on ''Occupational Employment and Wages, May 2019'' found at the following URL: *https://www.bls.gov/oes/current/oes_nat.htm#b29-0000.htm* for the respondents.

**Request for Comments**

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 5, 2020.

**Virginia L. Mackay-Smith,**

*Associate Director.*

[FR Doc. 2020–12615 Filed 6–10–20; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.*''

**DATES:** Comments on this notice must be received by 60 days after publication of this notice.

**ADDRESSES:** Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** To request additional information, please contact: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Proposed Project**

*Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery*

The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the

Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. The current clearance was approved on November 3, 2017 (OMB Control Number 0935–0179) and will expire on November 30, 2020.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Below we provide AHRQ's projected average annual estimates for the next three years:

*Current Actions:* New collection of information.

*Type of Review:* New Collection.

*Affected Public:* Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

*Average Expected Annual Number of Activities:* 10.

*Respondents:* 10,900.

*Annual responses:* 10,900.

*Frequency of Response:* Once per request.

The total number of respondents across all 10 activities in a given year is 10,900.

*Average minutes per response:* 19.

*Burden hours:* 3,383.

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 Office of Management and Budget control number.

**Request for Comments**

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 5, 2020.

**Virginia L. Mackay-Smith,**

*Associate Director.*

[FR Doc. 2020–12582 Filed 6–10–20; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE20–006: Research Grants To Prevent Firearm-Related Violence and Injuries; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—CE20–006: Research Grants to Prevent Firearm-Related Violence and Injuries; July 6–10, 2020, 8:30 a.m.–5:00 p.m., EDT, Videoconference which was published in the **Federal Register** on June 1, 2020, Volume 85, Number 105, page 33159. The meeting is being amended to include specific dates and times of the panels. CE20–006: Research Grants to Prevent Firearm-Related Violence and Injuries—Panel A will be held July 6–7, 2020 from 8:30 a.m.–5:00 p.m., EDT. CE20–006: Research Grants to Prevent Firearm-Related Violence and Injuries—Panel B1 and Panel B2 will be held July 8–10, 2020 from 8:30 a.m.–5:00 p.m., EDT. The meeting is closed to the public.

**FOR FURTHER INFORMATION CONTACT:** Mikel Walters, Ph.D., Scientific Review Official, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop F–63, Atlanta, Georgia 30341, Telephone (404) 639–0913, *MWalters@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2020–12654 Filed 6–10–20; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–7058–N]**

### Announcement of the Advisory Panel on Outreach and Education (APOE) June 25, 2020 Meeting

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the next meeting of the APOE (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the

effectiveness of consumer education strategies concerning the Health Insurance Marketplace, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

**DATES:**

*Meeting Date:* Thursday, June 25, 2020, 12:30 p.m. to 4:45 p.m. eastern daylight time (e.d.t).

*Deadline for Meeting Registration, Presentations, Special Accommodations and Comments:* Wednesday, June 17, 2020, 5:00 p.m. eastern daylight time (e.d.t).

**ADDRESSES:**

*Meeting Location:* The meeting will be held virtually. All those who RSVP will receive the link to attend.

*Presentations and Written Comments:* Presentations and written comments should be submitted to: Lisa Carr, Designated Federal Official (DFO), Office of Communications, Centers for Medicare & Medicaid Services, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.*

*Registration:* The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the website *https://www.eventbrite.com/e/104529556718/* or by contacting the DFO listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Lisa Carr, Designated Federal Official, Office of Communications, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov.* Additional information about the APOE is available at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

**SUPPLEMENTARY INFORMATION:**

## I. Background and Charter Renewal Information

### *A. Background*

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) signed the charter establishing the Citizen's Advisory Panel on Medicare Education [1] (the predecessor to the APOE) on January 21, 1999 (64 FR 7899) to advise and make recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare education programs, including with respect to the Medicare+Choice (M+C) program added by the Balanced Budget Act of 1997 (Pub. L. 105–33).

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) expanded the existing health plan options and benefits available under the M+C program and renamed it the Medicare Advantage (MA) program. CMS has had substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options available and better tools to evaluate these options. The successful MA program implementation required CMS to consider the views and policy input from a variety of private sector constituents and to develop a broad range of public-private partnerships.

In addition, Title I of the MMA authorized the Secretary and the Administrator of CMS (by delegation) to establish the Medicare prescription drug benefit. The drug benefit allows beneficiaries to obtain qualified prescription drug coverage. In order to effectively administer the MA program and the Medicare prescription drug benefit, we have substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options and benefits available, and to develop better tools to evaluate these plans and benefits.

The Patient Protection and Affordable Care Act (Pub. L. 111–148) and Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively referred to as the Affordable Care Act) expanded the availability of other options for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and CHIP. Qualified individuals and qualified employers are now able to purchase private health insurance coverage through a competitive marketplace, called an Affordable Insurance Exchange (also called Health Insurance Marketplace®, or Marketplace® [2]). In order to effectively implement and administer these changes, we must provide information to consumers, providers, and other stakeholders through education and outreach programs regarding how existing programs will change and the expanded range of health coverage options available, including private health insurance coverage through the Marketplace®. The APOE (the Panel) allows us to consider a broad range of views and information from interested audiences in connection with this effort and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

The scope of this Panel also includes advising on issues pertaining to the education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5).

On January 21, 2011, the Panel's charter was renewed and the Panel was renamed the Advisory Panel for Outreach and Education. The Panel's charter was most recently renewed on January 19, 2019, and will terminate on January 19, 2021 unless renewed by appropriate action.

### *B. Charter Renewal*

In accordance with the January 19, 2019, charter, the APOE will advise the HHS and CMS on developing and implementing education programs that support individuals who are enrolled in or eligible for Medicare, Medicaid, CHIP, or coverage available through the Health Insurance Marketplace® and other CMS programs. The scope of this Federal Advisory Committee Act (FACA) group also includes advising on education of providers and stakeholders with respect to health care reform and certain provisions of the HITECH Act enacted as part of the ARRA.

The charter will terminate on January 19, 2021, unless renewed by appropriate action. The APOE was chartered under 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended. The

[1] We note that the Citizen's Advisory Panel on Medicare Education is also referred to as the Advisory Panel on Medicare Education (65 FR 4617). The name was updated in the Second Amended Charter approved on July 24, 2000.

[2] Health Insurance Marketplace® and Marketplace® [2] are trademarks of the U.S. Department of Health & Human Services.

APOE is governed by provisions of Pubic Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

In accordance with the renewed charter, the APOE will advise the Secretary of Health and Human Services and the CMS Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, the CHIP, and coverage available through the Health Insurance Marketplace® and other CMS programs.
- Enhancing the federal government's effectiveness in informing Medicare, Medicaid, CHIP, or the Health Insurance Marketplace® consumers, issuers, providers, and stakeholders, pursuant to education and outreach programs of issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, partners and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, the CHIP and the Health Insurance Marketplace® education programs, and other CMS programs as designated.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel as of February 28, 2020 are: E. Lorraine Bell, Chief Officer, Population Health, Catholic Charities USA; Nazleen Bharmal, Medical Director of Community Partnerships, Cleveland Clinic; Angie Boddie, Director of Health Programs, National Caucus and Center on Black Aging, Inc.; Julie Carter, Senior Federal Policy Associate, Medicare Rights Center; Scott Ferguson, Director of Care Transitions and Population Health, Mount Sinai St. Luke's Hospital; Leslie Fried, Senior Director, Center for Benefits Access, National Council on Aging; David Goldberg, President and CEO of Mon Health System; Jean-Venable Robertson Goode, Professor, Department of Pharmacotherapy and Outcomes Science, School of Pharmacy, Virginia Commonwealth University; Ted Henson, Director of Health Center Performance and Innovation, National Association of Community Health Centers; Joan Ilardo, Director of Research Initiatives, Michigan State University, College of Human Medicine; Cheri Lattimer, Executive Director, National Transitions of Care Coalition; Cori McMahon, Vice President, Tridiuum; Alan Meade, Director of Rehab Services, Holston Medical group; Michael Minor, National Director, H.O.P.E. HHS Partnership, National Baptist Convention USA, Incorporated; Jina Ragland, Associate State Director of Advocacy and Outreach, AARP Nebraska; Morgan Reed, Executive Director, Association for Competitive Technology; Margot Savoy, Chair, Department of Family and Community Medicine, Temple University Physicians; Congresswoman Allyson Schwartz, President and CEO, Better Medicare Alliance; and; Tia Whitaker, Statewide Director, Outreach and Enrollment, Pennsylvania Association of Community Health Centers.

## II. Provisions of This Notice

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the June 25, 2020 meeting will include the following:

- Welcome and listening session with CMS leadership
- Recap of the previous (January 15, 2020) meeting
- CMS programs, initiatives, and priorities
- An opportunity for public comment
- Meeting summary, review of recommendations, and next steps

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

## III. Meeting Participation

This meeting will be held virtually. It is open to the public, but attendance is limited to registered participants. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

## IV. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Seema Verma, having reviewed and approved this document, authorizes Evell J. Barco Holland, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

**Authority:** Sec. 1114(f) of the Social Security Act (42 U.S.C. 1314(f)), sec. 222 of the Public Health Service Act (42 U.S.C. 217a), and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR part 102–3).

Dated: June 4, 2020.

**Evell J. Barco Holland,**

*Federal Register Liaison, Department of Health and Human Services.*

[FR Doc. 2020–12653 Filed 6–10–20; 8:45 am]

**BILLING CODE 4120–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Inherited Disease Research Access Committee; CIDR Review.

*Date:* July 17, 2020.

*Time:* 11:30 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3185, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Room 3185, Bethesda, MD 20892, 301–402–0838, *barbara.thomas@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: June 5, 2020.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–12616 Filed 6–10–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket Number USCG–2020–0188]**

### Application for Recertification of Cook Inlet Regional Citizens' Advisory Council

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Coast Guard announces the availability of, and seeks comments on, the recertification of the Cook Inlet Regional Citizen's Advisory Council (CIRCAC) for September 1, 2020 through August 31, 2021. Under the Oil Pollution Act of 1990 (OPA 90), the Coast Guard may certify the CIRCAC on an annual basis. This advisory group monitors the activities of terminal facilities and crude oil tankers under the Cook Inlet program established by the statute. The Coast Guard may certify an alternative voluntary advisory group in lieu of the CIRCAC. The current certification for the CIRCAC will expire August 31, 2020.

**DATES:** Public comments on CIRCAC's recertification application must reach the Seventeenth Coast Guard District on or before July 27, 2020.

**ADDRESSES:** You may submit comments identified by docket number USCG–2020–0188 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this recertification, call or email LT Ian McPhillips, Seventeenth Coast Guard District (dpi); telephone (907) 463–2809; email *Ian.P.McPhillips@uscg.mil.* If you have questions on viewing or submitting material to the docket, contact the U.S. Coast Guard Headquarters, Regulations and Administrative Law office, telephone (202) 372–3862.

**SUPPLEMENTARY INFORMATION:**

#### I. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### II. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

#### III. Public Meeting

The Coast Guard does not plan to hold a public meeting. But you may submit a request for one on or before July 27, 2020 using the method specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid the process of thoroughly considering the application for recertification, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### IV. Background and Purpose

The Coast Guard published guidelines on December 31, 1992 (57 FR 62600), to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36504), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act, and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act. Most recently, on September 16, 2002 (67 FR 58440), the Coast Guard changed its policy on recertification procedures for regional citizen's advisory council by requiring applicants to provide comprehensive information every three years. For the two years in between, applicants only submit information describing substantive changes to the information provided at the last triennial recertification. This is the year in this triennial cycle that CIRCAC must provide comprehensive information.

The Coast Guard is accepting comments concerning the recertification of CIRCAC. At the conclusion of the comment period on July 27, 2020, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o);

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies, which must be corrected to qualify for recertification for the remainder of the year; or

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of 33 U.S.C. 2732.

The Coast Guard will notify CIRCAC by letter of the action taken on its application. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: June 5, 2020.

**Matthew T. Bell, Jr.,**

*Rear Admiral, U.S. Coast Guard,Commander, Seventeenth Coast Guard District.*

[FR Doc. 2020–12637 Filed 6–10–20; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2020–0008]**

### Request for Information on Effectiveness in Maintaining and Improving State, Local, Tribal, and Territorial Preparedness

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice and request for information.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is issuing this Request for Information (RFI) to receive information in response to a list of priority research questions to further understand existing evidence on the Homeland Security Grant Program's (HSGP's) influence on State, local, Tribal, and territorial (SLTT) preparedness. The HSGP includes a suite of risk-based grants to assist SLTT efforts in preventing, preparing for, protecting against, and responding to acts of terrorism. HSGP funding can also be used to enhance preparedness for other catastrophic events (*e.g.,* hurricanes, wildfires) when the use of such funds has a nexus to preventing, preparing for, protecting against, and responding to terrorism.

**DATES:** Comments must be received by November 9, 2020.

**ADDRESSES:** You may submit comments, identified by docket ID FEMA–2020–0008, by one of the following methods:

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

See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Bethany Slater, Program Analyst, Measures and Standards Branch, National Preparedness Assessment Division, National Preparedness Directorate, FEMA, DHS, 400 C St. SW, Washington DC 20472, *Bethany.Slater@fema.dhs.gov,* 202–717–4111.

**SUPPLEMENTARY INFORMATION:**

#### I. Public Participation

*Instructions:* All submissions received must include the agency name and docket ID. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security notice, which can be viewed by clicking on the ''Privacy and Security Notice'' link on the homepage of *www.regulations.gov.*

You may submit your comments and material by the methods specified in the **ADDRESSES** section. Please submit your comments and any supporting material by only one means to avoid the receipt and review of duplicate submissions.

*Docket:* For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov* and search for the Docket ID.

#### II. Background and Purpose

HSGP provides funds to eligible entities to support SLTT efforts to prevent terrorism and to prepare the Nation for the threats and hazards that pose the greatest risk to the security of the United States. HSGP funding can also be used to enhance preparedness for other catastrophic events (*e.g.,* hurricanes, wildfires) when the use of such funds has a nexus to preventing, preparing for, protecting against, and responding to terrorism. Since its creation in 2003, HSGP annually issued between $850 million and $2.5 billion in grant funding to support SLTT governments.

As administered by FEMA, HSGP consists of three subcomponent programs: State Homeland Security Program (SHSP), Urban Area Security Initiative (UASI), and Operation Stonegarden. See FEMA, Homeland Security Grant Program, *https://www.fema.gov/homeland-security-grant-program* (last visited Feb. 28, 2020). This request for information is limited to SHSP and UASI.

The Homeland Security Act of 2002 authorizes the Department of Homeland Security (DHS)/FEMA to award SHSP and UASI funding to each State, territory, and high-risk urban area based on: (1) Its relative threat, vulnerability, and consequence from acts of terrorism, and (2) the anticipated effectiveness of the proposed use of the grant to prepare for, protect against, and respond to acts of terrorism. See 6 U.S.C. 608. Grant dollars are administrated by State Administrative Agencies who are generally required to pass-through at least 80 percent of SHSP and UASI funds to local or Tribal jurisdictions. See 6 U.S.C. 604(d)(2)(A), 605(c)(1)(A)–(C).

As the administrator of HSGP, FEMA is interested in identifying existing evidence, tools and methods to better evaluate the effectiveness of HSGP as it pertains to maintaining and improving SLTT and national preparedness. FEMA's National Preparedness Assessment Division has documented its past and current grant effectiveness strategy in its document ''Grant Effectiveness Strategic Vision 2.0 Homeland Security Grant Program.'' See FEMA, Grant Effectiveness Strategic Vision 2.0—Homeland Security Grant Program, *https://www.fema.gov/media-library/assets/documents/186474* (last visited Mar. 26, 2020). The objectives for this vision are:

Objective 1: Implement projects that address State and national priorities;

Objective 2: Improve capabilities and achieve preparedness outcomes; and

Objective 3: Manage projects in accordance with Federal standards and guidance.

The purpose of this RFI is for FEMA to receive information in response to a list of priority research questions to further understand existing evidence on the influence of HSGP on SLTT and national preparedness. FEMA requests information on research studies, program evaluations, and/or meta-analyses that provide empirical findings relevant to the research questions outlined below. FEMA is interested in evidence on the contributions of HSGP-funded projects (or projects that could be funded through HSGP in the future). Such evidence would ideally include quantitative measurements of how such projects help maintain or improve SLTT and national capabilities to prepare for, protect against, respond to, recover from, and mitigate all hazards and/or the risk of hazards. Additional broader quantitative research may also be helpful, such as research pertaining to interventions that help prevent or reduce the risk that an event will occur, or the impact of such events. Such research could relate to any of a range of interventions, including interventions that address public health, environmental conservation, domestic violence, criminal recidivism, and drug use. Helpful research may use capacity or capability assessments to measure changes in outcomes over time after an

intervention, or may use grant administrative data for evaluation. Finally, FEMA would also be interested in learning of ongoing or current studies that are in process, for which study findings will not be available at the time that comments in response to this notice are due, such as research question being addressed, sample size, study timeline, and registry where the study findings will be made available.

This information will assist FEMA understand existing empirical and other evidence, methods being utilized, available data, and research gaps to prioritize future evaluation funding. This will also help FEMA understand if this is an area where limited research and evaluation is available.

**III. List of Questions for Commenters**

FEMA seeks information on the following: (1) Existing evidence regarding HSGP effectiveness, and (2) Evidence from other programs or research areas that FEMA can rely upon to expand or revise the HSGP research agenda, such as by changing how FEMA and HSGP grantees and subgrantees measure outputs/outcomes, assess capacity/capability, and use grants administrative data for evaluation.

Priority Research Questions for FEMA on HSGP include:

1. What studies and evidence exist on assessing HSGP outcomes? What are the study, findings, sample, and methods employed? Is there a URL(s) publicly available with the study report and information?

2. What meta-analysis and/or summaries of evidence exist on the HSGP program?

Supporting questions specific to HSGP:

3. What outputs and outcomes are HSGP grants achieving?

4. How well does HSGP funding help build and sustain core capabilities? (*https://www.fema.gov/core-capability-development-sheets*)

5. How does HSGP funding affect identified capability gaps?

6. Which HSGP funding activities most effectively close capability gaps?

7. How do participants' KSAs (knowledge, skills, and abilities) change after completing an HSGP-funded training, after creating or enhancing an HSGP-funded plan, and/or after completing an HSGP-funded exercise?

8. How does HSGP funding influence grant recipient preparedness?

9. How well do HSGP investments contribute to preparedness for and response to real world incidents?

10. How well have HSGP projects reduced the risk of real-world incidents?

*Broader Research Questions*

*Outputs/Outcomes/Benefits/Success metrics:*

11. FEMA is interested in performance management and program evaluations conducted by HSGP award recipients, beyond what is reported to FEMA. What additional output and outcome measurements have been determined as crucial to determining program results and are beyond FEMA reporting requirements? What were the results of evaluations, if conducted?

12. What are the best output and outcome metrics to measure prevention of either a human-caused or natural incident (*e.g.,* terrorism, cyber-attack, hurricane)?

13. What are the best output and outcome metrics to measure the reduction of risk posed by terrorism or other incidents?

14. What is the best way to measure the quality of a planning document and to measure the improvement in outputs and outcomes resulting from the planning document's creation?

15. What is the best way to use exercises to measure change or improvement through exercises?

*Capacity/Capability Assessments:*

16. Are there specific interventions that would more properly be the subject of HSGP funding? What is the best way to measure improvements in grant recipient capabilities due to grant funding?

17. With respect to specific interventions that might properly be the subject of HSGP funding, if measuring change through self-reported assessments, what is a feasible expectation for magnitude of improvement within a specified timeframe?

18. Please provide examples of instruments provided to grant recipients for self-assessments and which result in information that is useful for both grant recipients and funders. Of particular interest are instruments that can be implemented by users with a wide range of evaluation or measurement experience (*i.e.,* none to expert).

*Grant Administration & Evaluation:*

19. Have formula or block grants (grants not competitively awarded) been successfully evaluated for effectiveness? What was the study design and sample, and what were the findings?

20. How do Federal agencies use administrative data to understand grant effectiveness in instances when grant implementation is at the state and local level?

*Evidence on Program Impacts and Grant Effectiveness*

21. Have impact evaluations been conducted that look at the difference between a control or comparison group and the treatment group? What are the study research question(s), design, sample, and findings? Where can more information on the study be found?

*Dissemination of Results:*

FEMA staff developed the RFI questions and will analyze the responses. We expect the analysis period to deepen our vision and understanding of the relationships between homeland security grants and overall preparedness.

*Rights to Materials Submitted:* By submitting material in response to this RFI, the respondent is agreeing to grant DHS a worldwide, royalty-free, perpetual, irrevocable, non-exclusive license to use the material and to make it publicly available. Further, the respondent agrees that it owns, has a valid license, or is otherwise authorized to provide the material to DHS.

This RFI is issued for information and planning purposes only and does not constitute an offer by the Federal Government to fund, as a whole or in part, the opportunities referenced herein. This RFI does not represent a pre-solicitation synopsis or a solicitation and does not constitute a request for proposal or request for quote.

The Federal Government will not pay for any information or administrative costs incurred in responding to this RFI; all costs associated with responding to this RFI will be solely at the interested party's expense. Any response received will not be used as a proposal or quote. The responses to this RFI will be reviewed by the Federal Government and may be used to develop requirements for future needs.

**Pete Gaynor,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2020–12620 Filed 6–10–20; 8:45 am]

**BILLING CODE 9111–46–P**

## INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

### Request for Nominations to the Board of Trustees

**AGENCY:** Institute of American Indian and Alaska Native Culture and Arts Development (aka Institute of American Indian Arts).

**ACTION:** Notice; request for nominations.

**SUMMARY:** The Board directs the Administration of the Institute of American Indian and Alaska Native Culture and Arts Development, including soliciting, accepting, and

disposing of gifts, bequests, and other properties for the benefit of the Institute. The Institute provides scholarly study of and instruction in Indian art and culture and establishes programs which culminate in the awarding of degrees in the various fields of Indian art and culture. The Board consists of thirteen members appointed by the President of the United States, by and with the consent of the U.S. Senate, who are American Indians or persons knowledgeable in the field of Indian art and culture. This notice requests nominations to fill one expiring term on the Board of Trustees.

**ADDRESSES:** Institute of American Indian Arts, 83 Avan Nu Po Road, Santa Fe, New Mexico 87508.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Martin, President, 505–424–2301.

Dated: June 5, 2020.

**Robert Martin,**

*President.*

[FR Doc. 2020–12667 Filed 6–10–20; 8:45 am]

**BILLING CODE 4312–W4–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. FWS–R8–ES–2020–0021; FF08ESMF00–FXES11140800000–189]**

### Stanislaus Regional Water Authority Water Supply Project, Stanislaus County, California; Draft Categorical Exclusion and Draft Habitat Conservation Plan

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of permit application; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of a draft categorical exclusion under the National Environmental Policy Act. We also announce receipt of an application for an incidental take permit under the Endangered Species Act (ESA), and receipt of a draft habitat conservation plan. The Stanislaus Regional Water Authority (SWRA) has applied for an incidental take permit under the ESA for the SRWA Water Supply Project in Stanislaus County, California. The permit would authorize the take of one species incidental to the construction, operation, and maintenance of the project. We invite the public and local, State, Tribal, and Federal agencies to comment on this application. Before issuing the requested permit, we will take into consideration any information that we receive during the public comment period.

**DATES:** We must receive your written comments on or before July 13, 2020.

**ADDRESSES:**

*Obtaining Documents:* The draft categorical exclusion (draft CatEx), draft habitat conservation plan (HCP), and any comments and other materials that we receive are available for public inspection at *http://www.regulations.gov* in Docket No. FWS–R8–ES–2020–0021.

*Submitting Comments:* To send written comments, please use one of the following methods, and note that your information requests or comments are in reference to the draft CatEx, draft HCP, or both.

- *Internet:* Submit comments at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2020–0021.
- *U.S. Mail:* Public Comments Processing, Attn: Docket No. FWS–R8–ES–2020–0021; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comments under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Timothy Ludwick, Senior Wildlife Biologist, or Patricia Cole, Chief, San Joaquin Valley Division, Sacramento Fish and Wildlife Office, by phone at 916–414–6600 or via the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft categorical exclusion (CatEx), prepared pursuant to the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. This notice also announces the receipt of an application from the Stanislaus Regional Water Authority (SRWA; applicant), for a 10-year incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Application for the permit requires the preparation of an HCP with measures to avoid, minimize, and mitigate the impacts of incidental take to the maximum extent practicable. The applicant prepared the draft SRWA Water Supply Project Low Effect Habitat Conservation Plan (draft HCP) pursuant to section 10(a)(1)(B) of the ESA. The purpose of the CatEx is to assess the effects of issuing the permit and implementing the draft HCP on the natural and human environment.

**Background Information**

Section 9 of the ESA (16 U.S.C. 1531–1544 *et seq.*) prohibits the taking of fish and wildlife species listed as endangered under section 4 of the ESA; by regulation, this take prohibition also applies to certain species listed as threatened, including the Valley elderberry longhorn beetle. 50 CFR 17.31(a). Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32. For more about the Federal habitat conservation plan (HCP) program, go to *http://www.fws.gov/endangered/esa-library/pdf/hcp.pdf.*

**National Environmental Policy Act Compliance**

The proposed permit issuance triggers the need for compliance with the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*). The draft CatEx was prepared to analyze the impacts of issuing an ITP based on the draft HCP and to inform the public of the proposed action, any alternatives, and associated impacts, and to disclose any irreversible commitments of resources.

*Proposed Action Alternative*

Under the Proposed Action Alternative, the Service would issue an ITP to the applicant for a period of 10 years for certain covered activities (described below). The applicant has requested an ITP for one covered species (described below), which is listed as threatened under the ESA.

Habitat Conservation Plan Area

The geographic scope of the draft HCP encompasses 16 acres, including the entire footprint needed to complete the project. The project would result in the installation of 3,900 feet of pipeline in the unincorporated portion of central Stanislaus County, California.

Covered Activities

The proposed section 10 ITP would allow take of one covered species from covered activities in the proposed HCP area. The applicant is requesting incidental take authorization for covered activities, including site preparation, construction, and access road maintenance in the project area. The applicant is proposing to implement a number of project design features, including best management practices, as well as general and species-specific avoidance and minimization measures to minimize the impacts of the take from the covered activities.

Covered Species

The Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), a species federally listed as threatened, is proposed to be included as a covered species in the proposed HCP:

*No-Action Alternative*

Under the No-Action Alternative, the Service would not issue an ITP to the applicant, and the draft HCP would not be implemented. Under this alternative, the applicant may choose not to install the pipeline, or would do so in a manner presumed not to result in the take of ESA listed species.

**Public Comments**

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 this notice, the draft CatEx, and the draft HCP. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Any other environmental issues that should be considered with regard to the proposed development and permit action.

**Public Availability of Comments**

Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might 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.

**Next Steps**

Issuance of an incidental take permit is a Federal proposed action subject to compliance with NEPA and section 7 of the ESA. We will evaluate the application, associated documents, and any public comments we receive as part of our NEPA compliance process to determine whether the application meets the requirements of section 10(a) of the ESA. If we determine that those requirements are met, we will conduct an intra-Service consultation under section 7 of the ESA for the Federal action of the potential issuance of an ITP. If the intra-Service consultation determines that issuance of the ITP will not jeopardize the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat, we will issue a permit to the applicant for the incidental take of the covered species.

**Authority** We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347 *et seq.*), and its implementing regulations at 40 CFR 1500–1508, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531–1544 *et seq.*) and its implementing regulations at 50 CFR 17.32(b)(2).

**Jennifer Norris,**

*Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, Sacramento, California.*

[FR Doc. 2020–12657 Filed 6–10–20; 8:45 am]

**BILLING CODE 4333–15–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1171]**

## Certain Child Resistant Closures With Slider Devices Having a User Actuated Insertable Torpedo for Selectively Opening the Closures and Slider Devices Therefor Commission Determination To Review in Part an Initial Determination Granting Complainant's Motion for Summary Determination of a Violation of Section 337; Schedule for Filing Written Submissions on Remedy, the Public Interest, and Bonding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that, on April 21, 2020, the presiding administrative law judge (''ALJ'') issued an initial determination (''ID'') in the above-captioned investigation, granting summary determination on violation of section 337 that included a recommended determination on remedy and bonding. On April 22, 2020, the ALJ issued a Notice of Errata thereto. The Commission has determined to review the ID in part. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On August 21, 2019, the Commission instituted this investigation based on a complaint filed by Reynolds Presto Products Inc. (''Presto''). 84 FR 43616–17 (Aug. 21, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (''section 337'') based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor by reason of infringement of certain claims of U.S. Patent Nos. 9,505,531 (''the '531 patent''); 9,554,628; and 10,273,058 (''the '058 patent'') (collectively, the ''Asserted Patents''). *Id.* at 43616. The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation names six respondents: Dalian Takebishi Packing Industry Co., Ltd. of Dalian, China (''Dalian Takebishi''); Dalian Altma Industry Co., Ltd. of Dalian, Liaoning, China (''Dalian Altma'') (together, the ''Dalian Respondents''); Japan Takebishi Co., Ltd., of Tokyo, Japan; Takebishi Co., Ltd., of Shiga, Japan; Shanghai Takebishi Packing Material Co., Ltd., of Shanghai, China; and Qingdao Takebishi Packing Industry Co., Ltd., of Qingdao, China. *Id.* at 43616–17. It also names the Office of Unfair Import Investigations (''OUII'') as a party. *Id.* at 43617.

On October 7, 2019, the ALJ issued an ID finding the Dalian Respondents in default. Order No. 7 (Oct. 30, 2019), *unreviewed by* Comm'n Notice (Nov. 26, 2019). On November 19, 2019, the ALJ issued an ID terminating the

investigation based on Presto's withdrawal of the complaint as to the other four respondents (Japan Takebishi Co., Ltd.; Takebishi Co., Ltd.; Shanghai Takebishi Packing Material Co., Ltd.; and Qingdao Takebishi Packing Industry Co., Ltd.). Order No. 10 (Nov. 19, 2019), *unreviewed by* Comm'n Notice (Dec. 18, 2019). That ID also terminated the investigation as to (i) claims 6 and 7 of the '531 patent and (ii) claims 6 and 7 of the '058 patent. *Id.*

On November 15, 2019, Presto filed a motion for summary determination that the domestic industry requirement was satisfied and that a violation had been established. Presto's motion requested immediate entry of a limited exclusion order against the Dalian Respondents, a general exclusion order (''GEO''), and a 100 percent bond. On November 26, 2019, OUII filed a response to the motion supporting the summary determination motion and the requested GEO and 100 percent bond.

On April 21, 2020, the ALJ issued the subject ID granting summary determination of violation of section 337 by the Dalian Respondents. The ID also contains the ALJ's recommendation on remedy and bonding, in which the ALJ recommends issuance of a GEO or, in the alternative, a limited exclusion order directed to each of the Dalian Respondents, and that a 100 percent bond be set for importation during the Presidential review period.

On May 1, 2020, OUII filed a petition seeking review of portions of the ID's analysis of the economic prong of the domestic industry requirement. No other party petitioned for review of the ID, and no party filed a response to OUII's petition.

The Commission has determined to review the ID in part with respect to the ID's analysis of the economic prong of the domestic industry requirement. The Commission has determined not to review the remaining findings in the ID. The Commission is not requesting any briefing on the issue under review.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) An exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) one or more cease and desist orders (''CDOs'') that could result in the Dalian Respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994). In addition, if a party seeks issuance of any CDOs, the written submissions should address that request in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor,* Inv. No. 337–TA–977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same,* Inv. No. 337–TA–959, Comm'n Op. (Feb. 13, 2017). The written submissions should respond to the following:

1. Is Presto still seeking CDOs against the Dalian Respondents?

2. If Presto is still seeking CDOs, please address the following questions:

a. Can the Commission grant CDOs if a complainant has not argued for them in its remedy briefing before the ALJ? Has the Commission ever granted CDOs under such circumstances?

b. What prejudice have the Dalian Respondents suffered as a result of Presto seeking CDOs in its complaint but not requesting them before the ALJ?

c. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a CDO is sought. If Presto also relies on other significant domestic operations that could undercut the remedy provided by an exclusion order, identify with citations to the record such information as to each respondent against whom a CDO is sought.

d. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a CDO is sought.

e. Please discuss any other basis upon which the Commission could enter a CDO.

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or CDO would have on: (1) The public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* Parties to this investigation, interested government agencies, and any other interested parties are invited to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should include views on the recommended determination by the ALJ on remedy and bonding.

In its initial written submission, Presto is also requested to submit proposed remedial orders for the Commission's consideration. Presto is further requested to identify the date the Asserted Patents expire, to provide the HTSUS subheadings under which the subject articles are imported, and to supply identification information for all known importers of the subject articles.

Initial written submissions, including proposed remedial orders, must be filed no later than close of business on June 12, 2020. Reply submissions must be filed no later than the close of business on June 19, 2020. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1171) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions

regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[1] solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission vote for these determinations took place on June 5, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 5, 2020.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2020–12594 Filed 6–10–20; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–610]**

### Bulk Manufacturer of Controlled Substances Application: SpecGx LLC

*Correction*

In notice document 2020–10601, appearing on pages 29741 through 29742 in the issue of Monday, May 18, 2020 make the following correction.

On page 29741, in the third column, in the **DATES** section, on the last line, ''July 17, 2025'' should read ''July 17, 2020''.

[FR Doc. C1–2020–10601 Filed 6–10–20; 8:45 am]

**BILLING CODE 1300–01–D**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–663]**

### Importer of Controlled Substances Application: Cardinal Health

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before July 13, 2020. Such persons may also file a written request for a hearing on the application on or before July 13, 2020.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on June 1, 2020, Cardinal Health, 15 Ingram Boulevard, La Vergne, Tennessee 37086–3630, applied to be registered as an importer of the following basic class(es) of controlled substance:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Secobarbitol ..... | 2315 | II |

The company plans to import the above controlled substance in finished dosage form for distribution to licensed registrants for the purpose of medical use only.

**William T. McDermott,**

*Assistant Administrator.*

[FR Doc. 2020–12625 Filed 6–10–20; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1121–0329]**

### Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension Without Change of Previously Approved Collection OJP Solicitation Template

**AGENCY:** Office of Justice Programs, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Office of Justice Programs (OJP), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until August 10, 2020.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on 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 Jennifer Yeh, (202) 616–9135, Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW, Washington, DC 20531 or *Jennifer.Yeh2@usdoj.gov.*

**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 Office of Justice Programs, 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

[1] All contract personnel will sign appropriate nondisclosure agreements.

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 to 1121–0329.

2. *The Title of the Form/Collection:* OJP Solicitation Template.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number available. Office of Justice Programs, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The primary respondents are state agencies, tribal governments, local governments, colleges and universities, non-profit organizations, for-profit organizations, and faith-based organizations. The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (*e.g.,* project activities, project abstract, project timeline, proposed budget, etc.); outlines program evaluation and performance measures; explains selection criteria and the review process; and provides registration dates, deadlines, and instructions on how to apply within the designated application system. The approved solicitation template collection also includes the OJP Budget Detail Worksheet; the Coordinated Tribal Assistance Solicitation (CTAS) Tribal Narrative Profile, Budget Detail Worksheet and Demographic Form; and the Financial Management and System of Internal Controls Questionnaire (FCQ).

The extension includes a more streamlined version of the solicitation template collection, whereas the agency moved static instructions and guidance that do not frequently change from year to year to a Grant Application Resource Guide web page. The result is a more concise, user-friendly solicitation document that draws closer attention to the program-specific details and requirements in order to reduce confusion for the applicant. Additionally, it enables the agency to revise static guidance on the web page as necessary, reducing the need to re-issue program solicitations already released to the public.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that information will be collected annually from approximately 10,000 applicants. Annual cost to the respondents is based on the number of hours involved in preparing and submitting a complete application package. Mandatory requirements for an application under the OJP and CTAS Standard Solicitation Template include a program narrative; budget details and narrative, via the OJP standard BDW; Applicant Disclosure of Pending Applications; Applicant Disclosure of High Risk Status; and the FCQ. With the exception of the Tribal Narrative Profile and added Demographic form, the mandatory requirements for an application under the CTAS Solicitation Template are the same as those for OJP. Optional requirements can be made mandatory depending on the type of program to include, but not limited to: Documentation related to Administration priority areas of consideration (*e.g.,* Documentation of Enhanced Public Safety in Qualified Opportunity Zones), project abstract, indirect cost rate agreement, tribal authorizing resolution, timelines, logic models, memoranda of understanding, letters of support, resumes, and research and evaluation independence and integrity. The estimated public reporting burden for this collection of information remains at up to 32 hours per application. The 32-hour estimate is based on the amount of time to prepare a research and evaluation proposal, one of the most time intensive types of application solicited by OJP.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this application is 320,000 hours.

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: June 3, 2020.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2020–12589 Filed 6–10–20; 8:45 am]

**BILLING CODE 4410–14–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Information Collection Activities; Comment Request

**AGENCY:** Bureau of Labor Statistics, Department of Labor.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the revision of the ''The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the Addresses section of this notice on or before August 10, 2020.

**ADDRESSES:** Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

**FOR FURTHER INFORMATION CONTACT:** Nora Kincaid, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Consumer Expenditure (CE) Surveys collect data on consumer expenditures, demographic information, and related data needed by the Consumer Price Index (CPI) and other public and private data users. The continuing surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and to obtain data for future

CPI revisions. The CE Surveys have been ongoing since 1979.

The data from the CE Surveys are used (1) for CPI revisions, (2) to provide a continuous flow of data on income and expenditure patterns for use in economic analysis and policy formulation, and (3) to provide a flexible consumer survey vehicle that is available for use by other Federal Government agencies. Public and private users of price statistics, including Congress and the economic policymaking agencies of the Executive branch, rely on data collected in the CPI in their day-to-day activities. Hence, data users and policymakers widely accept the need to improve the process used for revising the CPI. If the CE Surveys were not conducted on a continuing basis, current information necessary for more timely, as well as more accurate, updating of the CPI would not be available. In addition, data would not be available to respond to the continuing demand from the public and private sectors for current information on consumer spending.

In the Quarterly Interview Survey, each consumer unit (CU) in the sample is interviewed every three months over four calendar quarters. The sample for each quarter is divided into three panels, with CUs being interviewed every three months in the same panel of every quarter. The Quarterly Interview Survey is designed to collect data on the types of expenditures that respondents can be expected to recall for a period of three months or longer. In general the expenses reported in the Interview Survey are either relatively large, such as property, automobiles, or major appliances, or are expenses which occur on a fairly regular basis, such as rent, utility bills, or insurance premiums.

The Diary (or recordkeeping) Survey is completed at home by the respondent family for two consecutive one-week periods. The primary objective of the Diary Survey is to obtain expenditure data on small, frequently purchased items which normally are difficult to recall over longer periods of time.

**II. Current Action**

Office of Management and Budget clearance is being sought for the revision of the Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

The continuing CE Surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and obtain data for future CPI revisions.

In the CEQ, CE is seeking clearance to make the following changes: A question will be added on the number of members covered by Tricare; the term Keoghs will be removed from the question on retirement accounts and replaced with more commonly used terms; Virginia will be added to the drop down list of states on the Medicaid questions; e-scooters will be added as an example to bike-share; audio and video expenditure item codes will be consolidated; school books will be separated from school supplies and equipment item codes; several detailed clothing items will be converted to global questions and the remaining clothing item codes will be reorganized.

The CEQ added questions regarding stimulus payments paid by the Federal government under OMB clearance number 1220–0196 as an emergency clearance request. This expiration on this clearance expires on November 30, 2020. CE plans to continue asking these questions through December of 2020 and seeks clearance with this request to retain until this date. If it is determined the questions are needed beyond December a nonsubstantive change request will be submitted to retain them for a longer period. The CED uses both a CAPI instrument and the paper Diary CE–801, Record of Your Daily Expenses. In the CED CAPI instruments, the term Keoghs will be removed from the question on retirement accounts and replaced with more commonly used terms. In the Diary, in order to accommodate CPI's need for point of purchase collection, a column will be added to the clothing section to collect the store name or website where the item was purchased. Additionally, in order to avoid anticipated data collection issues, minor changes will be made to the sample.

Lastly, to limit exposure of staff and respondents in response to the coronavirus pandemic, procedures for the CEQ and CED will be modified on an as needed basis. In CED, these modifications will include emailing a link to a Diary form, telephone transcription of expenditures from the Diary, and the availability of an online Diary. In CEQ, these modifications will include telephone interiews in lieu of in-person interviews.

These letters explain the nature of the information the BLS wants to collect and the uses of the CEQ or the CED data, as appropriate; informs the respondents of the confidential treatment of all identifying information they provide; requests the respondents' participation in the survey; describes the survey's compliance with the relevant provisions of the Privacy Act and the Office of Management and Budget (OMB) disclosure requirements; and provide a link to the address of the respondent's informational web page. The advance letters for the CEQ will be updated to reflect changes in the estimated time to complete the interview with the removal of the clothing section. Each of the advance letters and several of the brochures in the portfolio are available in the following languages: Arabic, Chinese, Korean, Spanish, Russian, Vietnamese, and Polish.

For both CEQ and CED, additional wording will be added to the CAPI instruments regarding receipt of the advance letter in order to ensure communication of the confidentiality and Paperwork Reduction Act statements to respondents who may not have received the advanced letter due to disruptions related to the coronavirus pandemic.

A full list of the proposed changes to the Quarterly Interview Survey and Diary Survey are available upon request.

**III. Desired Focus of Comments**

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

*Title of Collection:* The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

*OMB Number:* 1220–0050.

*Type of Review: Revision.*

*Affected Public:* Individuals or Households.

| Form | Total respondents | Frequency | Total responses | Average time per response (minutes) | Estimated total burden |
|---|---|---|---|---|---|
| CEQ—Interview | 6,015 | 4 | 24,060 | 67 | 26,867 |
| CEQ—Reinterview | 2,887 | 1 | 2,887 | 10 | 481 |
| CED—Diary (record-keeping) | 7,535 | 2 | 15,070 | 70 | 17,582 |
| CED—Diary (Interview) | 7,535 | 2.3 | 17,332 | 19 | 5,488 |
| CED—Diary (Reinterview) | 1,507 | 1 | 1,507 | 10 | 251 |
| Totals | | | 60,856 | | 50,669 |

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 5th day of June 2020.

**Mark Staniorski,**

*Chief, Division of Management Systems.*

[FR Doc. 2020–12629 Filed 6–10–20; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Information Collection Activities; Comment Request

**AGENCY:** Bureau of Labor Statistics, Department of Labor

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''National Compensation Survey.'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before August 10, 2020.

**ADDRESSES:** Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

**FOR FURTHER INFORMATION CONTACT:** Nora Kincaid, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number.) (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The National Compensation Survey (NCS) is an ongoing survey of earnings and benefits among private firms, State, and local government. Data from the NCS program include estimates of wages covering broad groups of related occupations, and data that directly links benefit plan costs with detailed plan provisions. The NCS is used to produce the Employment Cost Trends, including the Employment Cost Index (ECI) and Employer Costs for Employee Compensation (ECEC), employee benefits data (on coverage, cost, and provisions), and data used by the President's Pay Agent. This data is used by compensation administrators and researchers in the public and private sectors. Data from the NCS are used to help in determining monetary policy (as a Principal Federal Economic Indicator.) The integrated program's single sample produces both time-series indexes and cost levels for industry and occupational groups, thereby increasing the analytical potential of the data.

The NCS employs probability methods for selection of occupations. This ensures that sampled occupations represent all occupations in the workforce, while minimizing the reporting burden on respondents. The survey collects data from a sample of employers. These data will consist of information about the duties, responsibilities, and compensation (earnings and benefits) for a sample of occupations for each sampled employer.Data will be updated on a quarterly basis. The updates will allow for production of data on change in earnings and total compensation.

#### II. Current Action

Office of Management and Budget clearance is being sought for a extension of the National Compensation Survey. This survey was revised to temporarily add questions to the National Compensation Survey to cover sick leave policy changes due to the coronavirus pandemic. These questions will be collected primarily through email in June and July of 2020. These data were approved for collection under Emergency OMB Clearance Package 1220–0195, which expires on November 30, 2020. Respondents will electronically complete and submit responses through a simple fillable form. The additional sick leave policy questions are not intended to be collected beyond the July timeframe.

At this time, BLS has discontinued in person data collection in response to the coronavirus pandemic. NCS will return to using in person interviews as a method of collection once restrictions are lifted. During this time, the NCS is relying heavily on telephone, email, and mail for current collection. Video interview collection is also available in response to the pandemic and is being considered as a standard collection method.

The NCS collects earnings and work level data on occupations for the nation. The NCS also collects information on the cost, provisions, and incidence of major employee benefits through its benefit cost and benefit provision programs and publications. BLS has for a number of years been using a revised approach to the Locality Pay Survey (LPS) component of the NCS; this uses data from two current BLS programs—the Occupational Employment Statistics (OES) survey and the ECI program. This approach uses OES data to provide wage data by occupation and by area, while ECI data are used to specify grade level effects. This approach is also being used to extend the estimation of pay gaps to areas that were not included in the prior Locality Pay Survey sample, and these data have been delivered to the Pay Agent (in 2019, data for 95 areas were delivered).

The NCS has a national survey design for the ECI and the EBS. The NCS private industry sample is on a three-year rotational cycle, with one frozen sample year every ten years for the NCS private industry sample when a new NCS State and local government sample starts (approximately in 2025).

The NCS continues to provide employee benefit provision and participation data. These data include estimates of how many workers receive the various employer-sponsored benefits. The data also include information about the common provisions of benefit plans.

NCS collection will use a number of collection forms (normally having unique private industry and government initiation and update collection forms and versions). For NCS update collection, the forms or screens give respondents their previously reported information, the dates they expected change to occur to these data, and space for reporting these changes.

The NCS for electronic collection uses a Web-based system (Web-Lite) that allows NCS respondents, using Secure Sockets Layer (SSL) encryption and the establishment's schedule number, to upload data files to a secure BLS server that forwards those files to the assigned BLS field economist.

Some benefits (called ''Other benefits'') data are collected to track the emergence of new or changing benefits over time. The BLS only asks whether sampled occupations receive these benefits and periodically modifies this list.

### III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

*Title of Collection:* National Compensation Survey.

*OMB Number:* 1220–0164.

*Type of Review: Extension* of a currently approved collection.

*Affected Public:* Businesses or other for-profit; not-for-profit institutions; and State, local, and tribal government.

*Total Respondents:* 15,863 (three-year average).

All figures are based on a three-year average. The total responses are higher as some respondents are contacted multiple times.

| | Respondents | Average responses per year | Total # of responses | Average minutes | Total hours |
|---|---|---|---|---|---|
| Three-year average | 15863 | 3.1342 | 49,717 | 53.0736 | 43,978 |

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 5th day of June 2020.

**Mark Staniorski,**

*Chief, Division of Management Systems.*

[FR Doc. 2020–12630 Filed 6–10–20; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## Agency Information Collection Activities: Announcement of the Office of Management and Budget (OMB) Control Numbers Under the Paperwork Reduction Act

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice; announcement of the Office of Management and Budget's (OMB) approval of information collection requirements.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) announces that OMB extended approval for information collection requirements found in OSHA's standards and a new collection of information pertaining to OSHA's Alliance Program outlined in this notice. OSHA sought approval of these requirements under the Paperwork Reduction Act of 1995 (PRA), and, as required by that Act, is announcing the approval numbers and expiration dates for these requirements and regulations.

**DATES:** Applicable June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:** In a series of **Federal Register** notices, the agency provided 60-day comment periods for the public to respond to OSHA's burden hour and cost estimates. The various information collection (paperwork) requirements in the safety and health standards pertain to general industry, construction, and maritime (*i.e.,* 29 CFR parts 1910, 1915, and 1926), and a collection of information pertaining to OSHA's Alliance Program.

In accordance with the PRA (44 U.S.C. 3501–3520), OMB approved these information collection requirements. The table provides the following information for each of these requirements approved by OMB: The title of the **Federal Register** notice; the **Federal Register** citation (date, volume, and leading page); OSHA docket number; OMB's Control Number; and the new expiration date.

In accordance with 5 CFR 1320.5(b), an agency cannot conduct, sponsor, or require a response to a collection of information unless the collection displays a valid OMB control number and the agency informs respondents that they need not respond to the collection of information.

| Title of the information collection request | Date of **Federal Register** publication, **Federal Register** citation, and OSHA docket No. | OMB control No. | Expiration date |
|---|---|---|---|
| Beryllium Standard for General Industry (29 CFR 1910.1024), Construction (29 CFR 1926.1124), and Maritime (29 CFR 1915.1024). | February 3, 2020, 83 FR 5996, Docket No. OSHA–2019–0010. | 1218–0267 | 05/31/2023 |
| Cranes and Derricks in Construction (29 CFR 1926, Subpart CC): Operator Qualification. | July 30, 2018, 83 FR 36507, Docket No. OSHA–2018–0009. | 1218–0270 | 02/28/2022 |
| Occupational Noise Exposure (29 CFR 1910.95) | November 21, 2019, 84 FR 64349, Docket No. OSHA–2010–0017. | 1218–0048 | 04/30/2023 |
| Occupational Safety and Health Administration Alliance Program | June 21, 2018, 83 FR 28868, Docket No. OSHA–2018–0006. | 1218–0274 | 02/28/2023 |
| Process Safety Management of Highly Hazardous Chemicals (PSM) (29 CFR 1910.119, 1926.64). | June 28, 2019, 84 FR 31119, Docket No. OSHA–2012–0039. | 1218–0200 | 04/30/2023 |

**Authority and Signature**

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on June 5, 2020.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2020–12631 Filed 6–10–20; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Office of Workers' Compensation Programs

### Agency Information Collection Activities; Comment Request; Request for Examination and/or Treatment

**AGENCY:** Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Request for Examination and/or Treatment.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Consideration will be given to all written comments received by August 10, 2020.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained for free by contacting Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

Submit written comments about this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room S3323, 200 Constitution Avenue NW, Washington, DC 20210; or by email at *suggs.anjanette@dol.gov.* Please note that comments submitted after the comment period will not be considered.

**FOR FURTHER INFORMATION CONTACT:** Anjanette Suggs by telephone at 202–354–9660 or by email at *suggs.anjanette@dol.gov.*

**SUPPLEMENTARY INFORMATION:** The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act. The Act provides benefits to workers' injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. In addition, several acts extend the Longshore Act's coverage to certain other employees.

Section 33 U.S.C. 907 of the Longshore Act and 20 CFR 702.419, the employer/insurance carrier is responsible for furnishing medical care for the injured employee for such period of time as the injury or recovery period may require. Form LS–1 serves two purposes: It authorizes the medical care, and it provides a vehicle for the treating physician to report the findings, treatment given, and anticipated physical condition of the employee.

Legal authority for this information collection is found at 33 U.S.C. 907.

Regulatory authority is found at 20 CFR 702.419.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB under the PRA approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Written comments will receive consideration, and summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB No. 1240–0029.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL-Office of Workers' Compensation Programs, DLHWC.

*Type of Review:* Extension of currently approved collection.

*Title of Collection:* Longshore and Harbor Workers' Compensation Act Pre-Hearing Statement.

*Form:* LS–1, Request for Examination and/or Treatment.

*OMB Control Number:* 1240–0029.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 3,800.

*Frequency:* On occasion.

*Total Estimated Annual Responses:* 60,000.

*Estimated Average Time per Response:* 32.5 minutes.

*Estimated Total Annual Burden Hours:* 48,750 hours.

*Total Estimated Annual Other Cost Burden:* $2,544,300.

(Authority: 44 U.S.C. 3506(c)(2)(A))

**Anjanette Suggs,**

*Agency Clearance Officer.*

[FR Doc. 2020–12632 Filed 6–10–20; 8:45 am]

**BILLING CODE 4510–CF–P**

## EXECUTIVE OFFICE OF THE PRESIDENT

### Office of National Drug Control Policy

### Designation of Three Areas as High Intensity Drug Trafficking Areas

**AGENCY:** Office of National Drug Control Policy (ONDCP).

**ACTION:** Notice of three HIDTA designations.

**SUMMARY:** The Director of the Office of National Drug Control Policy designated 3 additional areas as High Intensity Drug Trafficking Areas (HIDTA).

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this notice should be directed to Shannon L. Kelly, National HIDTA Director, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503; (202) 395–5872.

**SUPPLEMENTARY INFORMATION:** Pursuant to 21 U.S.C. 1706(b)(1), the Director of the Office of National Drug Control Policy designated 3 additional areas as High Intensity Drug Trafficking Areas (HIDTA). The new areas are Clark, Logan, and Simpson Counties in Kentucky as part of the Appalachia HIDTA.

Dated: June 8, 2020.

**Michael J. Passante,**

*Acting General Counsel.*

[FR Doc. 2020–12658 Filed 6–10–20; 8:45 am]

**BILLING CODE 3280–F5–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Institute of Museum and Library Services

### Submission for OMB Review, Comment Request, Proposed Collection Requests: Public Library Survey FY 2019–FY2021

**AGENCY:** Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

**ACTION:** Submission for OMB review, comment request.

**SUMMARY:** The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. By this notice, IMLS is soliciting comments concerning a change request approval of the IMLS administered Public Library Survey.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Comments must be submitted to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below on or before July 10, 2020.

OMB is particularly interested in comments that help the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

**ADDRESSES:** Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

**FOR FURTHER INFORMATION CONTACT:** Dr. Connie Bodner, Director of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by Telephone: 202–653–4636, or by email at *cbodner@imls.gov,* or by teletype (TTY/TDD) for persons with hearing difficulty at 202–653–4614.

**SUPPLEMENTARY INFORMATION:** The Institute of Museum and Library Services is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

*Current Actions:* Pursuant to Public Law 107–279, this Public Libraries Survey collects annual descriptive data on the universe of public libraries in the United States and the Outlying Areas. Information such as public service hours per year, circulation of library books, number of librarians, population of legal service area, expenditures for library collection, programs for children and young adults, staff salary data, and access to technology, etc., would be collected. The change request includes public library data related to data previously collected and new data regarding to COVID–19. The Public Libraries Survey has been conducted by the Institute of Museum and Library Services under the clearance number 3137–0074, which expires November 30, 2022. This action is to request a change in data previously collected and

new data regarding COVID–19. The expiration date will remain the same.

*Agency:* Institute of Museum and Library Services.

*Title:* Public Libraries Survey, FY 2019–FY 2021.

*OMB Number:* 3137–0074.

*Agency Number:* 3137.

*Affected Public:* State and local governments, State library administrative agencies, and public libraries.

*Number of Respondents:* 56.

*Frequency:* Annually.

*Burden hours per respondent:* 84.9.

*Total burden hours:* 4,585.

*Total Annualized capital/startup costs:* n/a.

*Total Annual Costs:* $130,168.

*Total Annual Federal Costs:* $925,193.00.

Dated: June 8, 2020.

**Kim Miller,**

*Senior Grants Management Specialist, Institute of Museum and Library Services.*

[FR Doc. 2020–12652 Filed 6–10–20; 8:45 am]

**BILLING CODE 7036–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: 3206–0134; SF 2803—Application To Make Deposit or Redeposit (CSRS) SF 3108—Application To Make Service Credit Payment for Civilian Service (FERS)

**AGENCY:** Office of Personnel Management.

**ACTION:** 60-Day notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection (ICR), Application to Make Deposit or Redeposit (CSRS), SF 2803, and Application to Make Service Credit Payment for Civilian Service (FERS) SF 3108.

**DATES:** Comments are encouraged and will be accepted until August 10, 2020.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

**SUPPLEMENTARY INFORMATION:** As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection (OMB No. 3206–0134). The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of 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.

SF 2803, Application to Make Deposit or Redeposit (CSRS) and SF 3108, Application to Make Service Credit Payment for Civilian Service (FERS), are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was not subject to retirement deductions which were subsequently refunded to the applicant.

*Analysis:*

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Application to Make Deposit or Redeposit (CSRS), and Application to Make Service Credit Payment for Civilian Service (FERS).

*OMB Number:* 3206–0134.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* 150.

*Estimated Time per Respondent:* 30 minutes.

*Total Burden Hours:* 75.

Office of Personnel Management.

**Alexys Stanley,**

*Regulatory Affairs Analyst.*

[FR Doc. 2020–12666 Filed 6–10–20; 8:45 am]

**BILLING CODE 6325–38–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 2, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 623 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–148, CP2020–159.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12600 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 1, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 5 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–147, CP2020–158.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12599 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 28, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service Contract 110 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–145, CP2020–155.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12598 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 28, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 621 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–143, CP2020–153.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12596 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 2, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 624 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–149, CP2020–160.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12601 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 4, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 149 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–154, CP2020–165.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12606 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 27, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 620 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–142, CP2020–152.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12595 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 4, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 114 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–153, CP2020–164.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12605 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 2, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 625 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–150, CP2020–161.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12602 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 27, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 619 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–141, CP2020–151.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12610 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 4, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 627 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–152, CP2020–163.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12604 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 26, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 618 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–139, CP2020–148.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12609 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 28, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 622 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–144, CP2020–154.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12597 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Change in Rates and Classes of General Applicability for Competitive Products

**AGENCY:** Postal Service™.

**ACTION:** Notice of a change in rates of general applicability for competitive products.

**SUMMARY:** This notice sets forth changes in rates of general applicability for competitive products for the USPS Loyalty Program.

**DATES:** Applicable *date:* August 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Reed, 202–268–3179.

**SUPPLEMENTARY INFORMATION:** On May 28, 2020, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established prices and classification changes for Priority Mail Express and Priority Mail to implement a new USPS Loyalty Program. The Governors' Decision and the record of proceedings in connection with such decision are reprinted below in accordance with section 3632(b)(2).

**Elizabeth Reed,**

*Attorney, Corporate and Postal Business Law.*

### Decision of the Governors of the United States Postal Service on Changes in Rates of General Applicability for Competitive Products (Governors' Decision No. 20–2)

May 28, 2020

### Statement of Explanation and Justification

Pursuant to authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 (''PAEA''), we establish new prices of general applicability for certain competitive products, specifically Priority Mail Express and Priority Mail, and such changes in classifications as are necessary to implement the new prices. The changes are described generally below, with a detailed description of the changes in the attachment hereto. The attachment includes the draft Mail Classification Schedule sections with classification changes in legislative format.

As shown in the nonpublic annex being filed under seal herewith, the changes we establish should enable each affected competitive product to cover its attributable costs (39 U.S.C. 3633(a)(2)) and should result in competitive products as a whole complying with 39 U.S.C. 3633(a)(3), which, as implemented by 39 CFR 3015.7(c), requires competitive products collectively to contribute a minimum of 9.1 percent to the Postal Service's institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise (39 U.S.C. 3633(a)(1)). We therefore find that the new prices are in accordance with 39 U.S.C. 3632–3633 and 39 CFR 3015.2.

These price and classification changes implement a new Loyalty Program for postal customers that ship Priority Mail Express and Priority Mail packages via Click-N-Ship. Incentives are established for both new and existing Click-N-Ship customers. The Loyalty Program is designed to encourage small and micro businesses to use Click-N-Ship and increase their shipping spend over the coming year. A portion of the program is also designed to provide a credit to these customers who experienced a volume decline as a result of the ongoing COVID–19 pandemic. The various incentives and tiers for the Loyalty Program are set forth in the Mail Classification Schedule attachment.

### Order

The changes in prices and classes set forth herein shall be effective on August 1, 2020, or as soon as practicable thereafter. We direct the Secretary to have this decision published in the **Federal Register** in accordance with 39 U.S.C. 3632(b)(2), and direct management to file with the Postal Regulatory Commission appropriate notice of these changes.

By The Governors:

/s/

Robert M. Duncan,

*Chairman, Board of Governors.*

### United States Postal Service Office of the Board of Governors

### Certification Of Governors' Vote On Governors' Decision No. 20–2

Consistent with 39 U.S.C. 3632(a), I hereby certify that, on May 28, 2020, the Governors voted on adopting Governors' Decision No. 20–2, and that a majority of the Governors then holding office voted in favor of that Decision.

/s/

Date: May 28, 2020

Michael J. Elston,

*Secretary of the Board of Governors.*

### 2105 Priority Mail Express

2105.1 Description

a. Priority Mail Express service provides a high speed, high reliability service. It is available from designated acceptance locations to designated postal facilities for delivery to the recipient or, optionally, pickup by the recipient. Drop-off, pick-up, and delivery times are specified by the Postal Service for particular locations and days of the week. Delivery is either overnight, on the second day, or on the second delivery day (the next delivery day following the second day), for particular locations and days of the week.

b. Any matter eligible for mailing may, at the option of the mailer, be mailed by Priority Mail Express service.

c. A receipt showing the time and date of mailing will be provided to the mailer upon acceptance of Priority Mail Express by the Postal Service. The receipt serves as proof of mailing. Claims for refunds of postage for not meeting applicable standards must be filed within the period of time and under terms and conditions specified in the Domestic Mail Manual.

d. Priority Mail Express pieces are sealed against postal inspection and shall not be opened except as authorized by law.

e. Priority Mail Express pieces that are undeliverable-as-addressed are entitled to be forwarded or returned to the sender without additional charge.

f. Insurance, up to $100.00, is included in Priority Mail Express postage. Additional insurance (Priority Mail Express Insurance) is available for an additional charge, depending on the value and nature of the item sent by Priority Mail Express service.

2105.2 Size and Weight Limitations

| | Length | Height | Thickness | Weight |
|---|---|---|---|---|
| Minimum | large enough to accommodate postage, address, and other required elements on the address side | | | none. |
| Maximum | 108 inches in combined length and girth | | | 70 pounds.[1] |
| Flat Rate Envelopes | Nominal Sizes:<br>Regular: 9.5 × 12.5 inches<br>Legal: 9.5 × 15 inches | | | |

| | Length | Height | Thickness | Weight |
|---|---|---|---|---|
| | Padded: 9.5 × 12.5 inches | | | |

**Notes**

1. An overweight item charge of $100.00 applies to pieces found in the postal network that exceed the 70-pound maximum weight limitation. Such items are nonmailable and will not be delivered. As described in the Domestic Mail Manual, this charge is payable before release of the item, unless the item is picked up at the same facility where it was entered.

2105.3 Minimum Volume Requirements

| | Minimum volume requirements |
|---|---|
| Priority Mail Express | none. |

2105.4 Price Categories

The following price categories are available for the product specified in this section:

- Retail
  - Zone/Weight—Prices are based on weight and zone
  - Flat Rate Envelopes—Envelope provided or approved by the Postal Service
  - Dimensional Weight—Applies to parcels in zones local through 9 that exceed one cubic foot
  - *Loyalty Program—Applies to qualifying business customers who use Click-N-Ship*
- Commercial Base—Prices are available to customers who use specifically authorized postage payment methods.[1]
  - Zone/Weight—Prices are based on weight and zone
  - Flat Rate Envelopes—Envelope provided or approved by the Postal Service
  - Dimensional Weight—Applies to parcels in zones local through 9 that exceed one cubic foot
- Commercial Plus—Prices are available to customers who use specifically authorized postage payment methods and mail over 5,000 pieces annually.
  - Zone/Weight—Prices are based on weight and zone
  - Flat Rate Envelopes—Envelope provided or approved by the Postal Service
  - Dimensional Weight—Applies to parcels in zones local through 9 that exceed one cubic foot

2105.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Pickup On Demand Service
- Sunday/Holiday Delivery
- 10:30 a.m. Delivery
- Ancillary Services (1505)
  - Address Correction Service (1505.1)
  - Collect On Delivery (1505.7)
  - Priority Mail Express Insurance (1505.9)
  - Return Receipt (1505.13)
  - Special Handling (1505.18)
- Competitive Ancillary Services (2545)
  - Adult Signature (2545.1)
  - Package Intercept Service (2545.2)
  - Premium Data Retention and Retrieval Service (2545.3)

2105.6 Prices

RETAIL PRIORITY MAIL EXPRESS ZONE/WEIGHT

| Maximum weight (pounds) | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| 0.5 | 26.35 | 26.60 | 27.50 | 30.70 | 32.75 | 34.80 | 37.15 | 50.60 |
| 1 | 26.75 | 28.85 | 31.50 | 36.70 | 39.50 | 41.75 | 44.00 | 59.90 |
| 2 | 27.15 | 31.15 | 35.55 | 42.75 | 46.20 | 48.70 | 50.85 | 69.25 |
| 3 | 27.55 | 33.40 | 39.55 | 48.75 | 52.95 | 55.60 | 57.65 | 78.55 |
| 4 | 27.95 | 35.70 | 43.60 | 54.80 | 59.65 | 62.55 | 64.50 | 87.90 |
| 5 | 28.35 | 37.95 | 47.60 | 60.80 | 66.40 | 69.50 | 71.35 | 97.20 |
| 6 | 31.20 | 41.65 | 52.80 | 66.80 | 72.55 | 76.10 | 78.10 | 106.40 |
| 7 | 34.10 | 45.35 | 58.05 | 72.80 | 78.70 | 82.75 | 84.90 | 115.65 |
| 8 | 36.95 | 49.10 | 63.25 | 78.75 | 84.80 | 89.35 | 91.65 | 124.85 |
| 9 | 39.85 | 52.80 | 68.50 | 84.75 | 90.95 | 96.00 | 98.45 | 134.10 |
| 10 | 42.70 | 56.50 | 73.70 | 90.75 | 97.10 | 102.60 | 105.20 | 143.30 |
| 11 | 44.75 | 60.70 | 77.85 | 94.80 | 100.95 | 106.60 | 109.40 | 149.05 |
| 12 | 46.80 | 64.90 | 82.00 | 98.85 | 104.80 | 110.65 | 113.60 | 154.75 |
| 13 | 48.90 | 69.15 | 86.15 | 102.90 | 108.65 | 114.65 | 117.80 | 160.45 |
| 14 | 50.95 | 73.35 | 90.30 | 106.95 | 112.50 | 118.70 | 122.00 | 166.20 |
| 15 | 53.00 | 77.55 | 94.45 | 111.05 | 116.35 | 122.70 | 126.20 | 171.90 |
| 16 | 55.05 | 81.75 | 98.60 | 115.10 | 120.15 | 126.70 | 130.45 | 177.65 |
| 17 | 57.10 | 85.95 | 102.75 | 119.15 | 124.00 | 130.75 | 134.65 | 183.35 |
| 18 | 59.20 | 90.20 | 106.90 | 123.20 | 127.85 | 134.75 | 138.85 | 189.10 |
| 19 | 61.25 | 94.40 | 111.05 | 127.25 | 131.70 | 138.80 | 143.05 | 194.80 |
| 20 | 63.30 | 98.60 | 115.20 | 131.30 | 135.55 | 142.80 | 147.25 | 200.55 |
| 21 | 65.60 | 103.15 | 119.70 | 136.30 | 140.65 | 148.05 | 152.75 | 208.05 |
| 22 | 67.95 | 107.65 | 124.15 | 141.30 | 145.70 | 153.35 | 158.20 | 215.50 |
| 23 | 70.25 | 112.20 | 128.65 | 146.35 | 150.80 | 158.60 | 163.70 | 223.00 |
| 24 | 72.55 | 116.70 | 133.10 | 151.35 | 155.85 | 163.90 | 169.20 | 230.45 |
| 25 | 74.85 | 121.25 | 137.60 | 156.35 | 160.95 | 169.15 | 174.70 | 237.95 |
| 26 | 77.20 | 125.80 | 142.05 | 161.35 | 166.05 | 174.45 | 180.15 | 245.40 |
| 27 | 79.50 | 130.30 | 146.55 | 166.35 | 171.10 | 179.70 | 185.65 | 252.90 |
| 28 | 81.80 | 134.85 | 151.00 | 171.40 | 176.20 | 185.00 | 191.15 | 260.35 |
| 29 | 84.10 | 139.35 | 155.50 | 176.40 | 181.25 | 190.25 | 196.65 | 267.85 |

[1] *Under the Loyalty Program, Gold Tier customers are eligible for Commercial Base prices.*

RETAIL PRIORITY MAIL EXPRESS ZONE/WEIGHT—Continued

| Maximum weight (pounds) | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| 30 | 86.45 | 143.90 | 159.95 | 181.40 | 186.35 | 195.55 | 202.10 | 275.30 |
| 31 | 88.75 | 148.45 | 164.45 | 186.40 | 191.45 | 200.80 | 207.60 | 282.80 |
| 32 | 91.05 | 152.95 | 168.90 | 191.40 | 196.50 | 206.10 | 213.10 | 290.25 |
| 33 | 93.35 | 157.50 | 173.40 | 196.45 | 201.60 | 211.35 | 218.60 | 297.75 |
| 34 | 95.70 | 162.00 | 177.85 | 201.45 | 206.65 | 216.65 | 224.05 | 305.20 |
| 35 | 98.00 | 166.55 | 182.35 | 206.45 | 211.75 | 221.90 | 229.55 | 312.70 |
| 36 | 100.55 | 171.00 | 187.20 | 212.00 | 217.55 | 227.95 | 235.70 | 321.20 |
| 37 | 102.75 | 175.20 | 192.05 | 217.35 | 223.35 | 233.90 | 241.95 | 329.45 |
| 38 | 105.15 | 179.70 | 196.90 | 222.85 | 228.90 | 239.65 | 247.90 | 337.75 |
| 39 | 107.75 | 184.05 | 201.85 | 228.20 | 234.20 | 245.15 | 254.05 | 346.10 |
| 40 | 110.05 | 188.20 | 206.75 | 233.70 | 239.95 | 251.00 | 260.30 | 354.55 |
| 41 | 112.20 | 192.65 | 211.55 | 239.00 | 245.75 | 257.10 | 266.35 | 362.70 |
| 42 | 114.20 | 197.05 | 216.45 | 244.30 | 251.55 | 263.00 | 272.40 | 371.05 |
| 43 | 116.85 | 201.35 | 221.15 | 249.65 | 257.10 | 268.70 | 278.55 | 379.45 |
| 44 | 119.00 | 205.75 | 226.10 | 255.10 | 262.65 | 274.45 | 284.65 | 387.65 |
| 45 | 121.30 | 210.10 | 230.80 | 260.30 | 268.25 | 280.25 | 290.90 | 396.20 |
| 46 | 123.60 | 214.30 | 235.95 | 265.85 | 273.85 | 285.95 | 296.90 | 404.40 |
| 47 | 126.25 | 218.65 | 240.70 | 271.15 | 279.55 | 291.80 | 303.05 | 412.70 |
| 48 | 128.35 | 223.20 | 245.45 | 276.35 | 285.15 | 297.55 | 309.15 | 421.10 |
| 49 | 130.70 | 227.35 | 250.40 | 281.70 | 291.00 | 303.50 | 315.25 | 429.50 |
| 50 | 133.45 | 231.85 | 255.25 | 287.20 | 296.40 | 309.10 | 321.35 | 437.75 |
| 51 | 135.80 | 236.25 | 260.10 | 292.45 | 301.95 | 314.80 | 326.65 | 444.95 |
| 52 | 138.10 | 240.30 | 264.85 | 297.70 | 307.80 | 320.75 | 333.80 | 454.55 |
| 53 | 140.40 | 244.85 | 269.80 | 303.05 | 313.45 | 326.50 | 339.85 | 462.90 |
| 54 | 142.90 | 249.20 | 274.60 | 308.20 | 319.15 | 332.35 | 345.90 | 471.15 |
| 55 | 145.75 | 254.95 | 279.60 | 313.70 | 324.65 | 338.00 | 352.00 | 479.45 |
| 56 | 148.75 | 259.40 | 284.30 | 318.90 | 330.20 | 343.80 | 358.10 | 487.85 |
| 57 | 151.35 | 263.75 | 289.15 | 324.25 | 335.80 | 349.45 | 364.20 | 496.05 |
| 58 | 153.90 | 267.95 | 294.00 | 329.45 | 341.50 | 355.25 | 370.30 | 504.35 |
| 59 | 156.05 | 272.30 | 298.75 | 334.70 | 347.30 | 361.05 | 376.45 | 512.70 |
| 60 | 158.15 | 276.70 | 303.65 | 340.00 | 352.90 | 366.80 | 382.55 | 521.05 |
| 61 | 160.40 | 281.05 | 308.80 | 345.60 | 358.50 | 372.45 | 388.65 | 529.35 |
| 62 | 162.90 | 285.35 | 313.50 | 350.60 | 364.05 | 378.20 | 394.90 | 537.85 |
| 63 | 165.55 | 289.65 | 318.35 | 355.95 | 369.80 | 384.05 | 401.00 | 546.20 |
| 64 | 167.85 | 293.95 | 323.15 | 361.05 | 375.50 | 389.85 | 407.10 | 554.65 |
| 65 | 170.70 | 298.30 | 328.00 | 366.30 | 381.10 | 395.30 | 413.20 | 562.80 |
| 66 | 173.90 | 302.80 | 333.00 | 371.70 | 386.80 | 401.05 | 419.30 | 570.95 |
| 67 | 175.90 | 307.05 | 337.90 | 377.00 | 392.15 | 406.65 | 425.40 | 579.45 |
| 68 | 178.20 | 311.35 | 342.70 | 382.10 | 398.05 | 412.60 | 431.70 | 588.00 |
| 69 | 181.00 | 315.75 | 347.45 | 387.35 | 403.55 | 418.15 | 437.55 | 595.95 |
| 70 | 184.30 | 320.15 | 352.40 | 392.65 | 409.20 | 423.85 | 443.70 | 604.40 |

RETAIL FLAT RATE ENVELOPE

| | ($) |
|---|---|
| Retail Regular Flat Rate Envelope, per piece | 26.35 |
| Retail Legal Flat Rate Envelope, per piece | 26.50 |
| Retail Padded Flat Rate Envelope, per piece | 26.95 |

*Retail Dimensional Weight*

In Zones 1–9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

*Loyalty Program*

*Upon the initiation of the Loyalty Program, all USPS business customers who use Click-N-Ship will be automatically enrolled in the Basic tier of the Loyalty Program, thereby earning a $40 credit for every $500 combined spent at Priority Mail Express Retail and Priority Mail Retail rates.*

*Beginning on January 1, 2021, and on every January 1 thereafter, all USPS business customers who use Click-N-Ship will be enrolled in one of the following three tiers of the Loyalty Program, based on their combined shipping spend at Priority Mail Express Retail and Priority Mail Retail rates in the previous calendar year, as follows:*

- *Basic (no minimum spend): Earn $40 credit for every $500 spent*
- *Silver (at least $10,000 spend): Earn $50 credit for every $500 spent*
- *Gold (at least $20,000 spend): Qualify for Commercial Base Pricing*

*In the first year of the Loyalty Program, any new USPS business customer who uses Click-N-Ship will receive a one-time $40 ''Welcome Bonus'' credit upon shipping at least $500 combined at Priority Mail Express Retail and Priority Mail Retail rates.*

*All participants in the Loyalty Program will be eligible to receive an additional one-time $20 credit for shipping during the first two months of the program, which will be applied once participants ship at least $500 combined at Priority Mail Express Retail and Priority Mail Retail rates.*

*All credits must be redeemed within one year from the date of issuance.*

COMMERCIAL BASE ZONE/WEIGHT

| Maximum weight (pounds) | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| 0.5 | 22.75 | 23.30 | 24.05 | 26.35 | 28.25 | 30.05 | 32.45 | 43.95 |
| 1 | 23.00 | 25.20 | 27.45 | 31.20 | 33.65 | 35.65 | 38.05 | 51.50 |
| 2 | 23.25 | 27.05 | 30.90 | 36.00 | 39.05 | 41.20 | 43.60 | 59.05 |
| 3 | 23.50 | 28.95 | 34.30 | 40.85 | 44.40 | 46.80 | 49.20 | 66.55 |
| 4 | 23.75 | 30.80 | 37.75 | 45.65 | 49.80 | 52.35 | 54.75 | 74.10 |
| 5 | 24.00 | 32.70 | 41.15 | 50.50 | 55.20 | 57.95 | 60.35 | 81.65 |
| 6 | 26.45 | 35.95 | 45.70 | 55.55 | 60.40 | 63.55 | 66.15 | 89.50 |
| 7 | 28.90 | 39.20 | 50.30 | 60.60 | 65.60 | 69.15 | 71.95 | 97.35 |
| 8 | 31.40 | 42.50 | 54.85 | 65.60 | 70.75 | 74.75 | 77.75 | 105.20 |
| 9 | 33.85 | 45.75 | 59.45 | 70.65 | 75.95 | 80.35 | 83.55 | 113.05 |
| 10 | 36.30 | 49.00 | 64.00 | 75.70 | 81.15 | 85.95 | 89.35 | 120.90 |
| 11 | 38.20 | 52.90 | 67.90 | 79.60 | 84.90 | 89.90 | 93.55 | 126.55 |
| 12 | 40.10 | 56.80 | 71.75 | 83.55 | 88.70 | 93.85 | 97.70 | 132.20 |
| 13 | 42.05 | 60.70 | 75.65 | 87.45 | 92.45 | 97.80 | 101.90 | 137.90 |
| 14 | 43.95 | 64.60 | 79.55 | 91.40 | 96.20 | 101.75 | 106.05 | 143.55 |
| 15 | 45.85 | 68.50 | 83.45 | 95.30 | 100.00 | 105.65 | 110.20 | 149.20 |
| 16 | 47.75 | 72.35 | 87.30 | 99.20 | 103.75 | 109.60 | 114.40 | 154.85 |
| 17 | 49.65 | 76.25 | 91.20 | 103.15 | 107.50 | 113.55 | 118.55 | 160.50 |
| 18 | 51.60 | 80.15 | 95.10 | 107.05 | 111.25 | 117.50 | 122.75 | 166.20 |
| 19 | 53.50 | 84.05 | 98.95 | 111.00 | 115.05 | 121.45 | 126.90 | 171.85 |
| 20 | 55.40 | 87.95 | 102.85 | 114.90 | 118.80 | 125.40 | 131.10 | 177.50 |
| 21 | 57.35 | 91.90 | 106.75 | 119.15 | 123.15 | 129.90 | 135.85 | 183.95 |
| 22 | 59.35 | 95.85 | 110.65 | 123.45 | 127.50 | 134.45 | 140.60 | 190.40 |
| 23 | 61.30 | 99.80 | 114.50 | 127.70 | 131.80 | 138.95 | 145.40 | 196.85 |
| 24 | 63.30 | 103.75 | 118.40 | 132.00 | 136.15 | 143.45 | 150.15 | 203.25 |
| 25 | 65.25 | 107.70 | 122.30 | 136.25 | 140.50 | 147.95 | 154.90 | 209.70 |
| 26 | 67.20 | 111.65 | 126.20 | 140.50 | 144.85 | 152.50 | 159.65 | 216.15 |
| 27 | 69.20 | 115.60 | 130.10 | 144.80 | 149.20 | 157.00 | 164.40 | 222.60 |
| 28 | 71.15 | 119.55 | 133.95 | 149.05 | 153.50 | 161.50 | 169.20 | 229.05 |
| 29 | 73.15 | 123.50 | 137.85 | 153.35 | 157.85 | 166.00 | 173.95 | 235.50 |
| 30 | 75.10 | 127.45 | 141.75 | 157.60 | 162.20 | 170.55 | 178.70 | 241.95 |
| 31 | 77.05 | 131.40 | 145.65 | 161.85 | 166.55 | 175.05 | 183.45 | 248.40 |
| 32 | 79.05 | 135.35 | 149.55 | 166.15 | 170.90 | 179.55 | 188.20 | 254.80 |
| 33 | 81.00 | 139.30 | 153.40 | 170.40 | 175.20 | 184.05 | 193.00 | 261.25 |
| 34 | 83.00 | 143.25 | 157.30 | 174.70 | 179.55 | 188.60 | 197.75 | 267.70 |
| 35 | 84.95 | 147.20 | 161.20 | 178.95 | 183.90 | 193.10 | 202.50 | 274.15 |
| 36 | 87.15 | 151.10 | 165.60 | 183.75 | 188.95 | 198.30 | 207.90 | 281.50 |
| 37 | 89.00 | 154.85 | 169.85 | 188.35 | 193.95 | 203.50 | 213.35 | 288.85 |
| 38 | 91.10 | 158.75 | 174.15 | 193.10 | 198.75 | 208.50 | 218.65 | 296.05 |
| 39 | 93.35 | 162.65 | 178.55 | 197.75 | 203.40 | 213.30 | 224.10 | 303.45 |
| 40 | 95.35 | 166.30 | 182.90 | 202.55 | 208.35 | 218.45 | 229.55 | 310.80 |
| 41 | 97.25 | 170.25 | 187.15 | 207.10 | 213.40 | 223.65 | 234.90 | 318.00 |
| 42 | 98.95 | 174.15 | 191.40 | 211.75 | 218.40 | 228.80 | 240.20 | 325.25 |
| 43 | 101.25 | 177.90 | 195.65 | 216.35 | 223.25 | 233.80 | 245.70 | 332.60 |
| 44 | 103.05 | 181.80 | 200.00 | 221.05 | 228.05 | 238.75 | 251.00 | 339.85 |
| 45 | 105.05 | 185.65 | 204.15 | 225.55 | 232.95 | 243.85 | 256.50 | 347.30 |
| 46 | 107.10 | 189.40 | 208.70 | 230.40 | 237.80 | 248.80 | 261.85 | 354.55 |
| 47 | 109.35 | 193.25 | 212.90 | 235.00 | 242.70 | 253.85 | 267.25 | 361.85 |
| 48 | 111.25 | 197.20 | 217.10 | 239.45 | 247.60 | 258.90 | 272.65 | 369.15 |
| 49 | 113.20 | 200.90 | 221.45 | 244.15 | 252.65 | 264.10 | 278.10 | 376.55 |
| 50 | 115.65 | 204.85 | 225.80 | 248.90 | 257.40 | 268.90 | 283.45 | 383.75 |
| 51 | 117.65 | 208.75 | 230.05 | 253.45 | 262.20 | 273.90 | 288.10 | 390.05 |
| 52 | 119.70 | 212.40 | 234.25 | 258.00 | 267.30 | 279.05 | 294.30 | 398.50 |
| 53 | 121.60 | 216.35 | 238.65 | 262.65 | 272.20 | 284.10 | 299.70 | 405.75 |
| 54 | 123.80 | 220.25 | 242.85 | 267.15 | 277.05 | 289.15 | 305.05 | 413.05 |
| 55 | 126.25 | 225.30 | 247.30 | 271.90 | 281.90 | 294.05 | 310.40 | 420.30 |
| 56 | 128.90 | 229.20 | 251.50 | 276.40 | 286.75 | 299.05 | 315.85 | 427.65 |
| 57 | 131.10 | 233.05 | 255.80 | 281.00 | 291.60 | 304.05 | 321.20 | 434.85 |
| 58 | 133.35 | 236.75 | 260.05 | 285.50 | 296.60 | 309.10 | 326.60 | 442.15 |
| 59 | 135.20 | 240.60 | 264.30 | 290.10 | 301.60 | 314.15 | 331.95 | 449.45 |
| 60 | 137.00 | 244.45 | 268.65 | 294.65 | 306.45 | 319.10 | 337.35 | 456.75 |
| 61 | 138.95 | 248.40 | 273.15 | 299.45 | 311.35 | 324.10 | 342.75 | 464.05 |
| 62 | 141.10 | 252.10 | 277.30 | 303.85 | 316.15 | 328.95 | 348.25 | 471.50 |

COMMERCIAL BASE ZONE/WEIGHT—Continued

| Maximum weight (pounds) | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| 63 | 143.45 | 255.95 | 281.60 | 308.45 | 321.10 | 334.10 | 353.70 | 478.85 |
| 64 | 145.35 | 259.75 | 285.80 | 312.90 | 326.05 | 339.10 | 359.10 | 486.15 |
| 65 | 147.85 | 263.60 | 290.10 | 317.45 | 330.90 | 343.95 | 364.40 | 493.35 |
| 66 | 150.60 | 267.55 | 294.50 | 322.15 | 335.80 | 349.00 | 369.75 | 500.55 |
| 67 | 152.35 | 271.30 | 298.85 | 326.75 | 340.55 | 353.80 | 375.20 | 507.95 |
| 68 | 154.35 | 275.15 | 303.10 | 331.15 | 345.65 | 359.00 | 380.70 | 515.45 |
| 69 | 156.80 | 279.05 | 307.35 | 335.70 | 350.40 | 363.85 | 385.85 | 522.45 |
| 70 | 159.65 | 282.90 | 311.70 | 340.25 | 355.35 | 368.80 | 391.30 | 529.80 |

COMMERCIAL BASE FLAT RATE ENVELOPE

| | ($) |
|---|---|
| Commercial Base Regular Flat Rate Envelope, per piece | 22.75 |
| Commercial Base Legal Flat Rate Envelope, per piece | 22.95 |
| Commercial Base Padded Flat Rate Envelope, per piece | 23.25 |

*Commercial Base Dimensional Weight*

In Zones 1–9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

COMMERCIAL PLUS ZONE/WEIGHT

| Maximum weight (pounds) | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| 0.5 | 22.75 | 23.30 | 24.05 | 26.35 | 28.25 | 30.05 | 32.45 | 43.95 |
| 1 | 23.00 | 25.20 | 27.45 | 31.20 | 33.65 | 35.65 | 38.05 | 51.50 |
| 2 | 23.25 | 27.05 | 30.90 | 36.00 | 39.05 | 41.20 | 43.60 | 59.05 |
| 3 | 23.50 | 28.95 | 34.30 | 40.85 | 44.40 | 46.80 | 49.20 | 66.55 |
| 4 | 23.75 | 30.80 | 37.75 | 45.65 | 49.80 | 52.35 | 54.75 | 74.10 |
| 5 | 24.00 | 32.70 | 41.15 | 50.50 | 55.20 | 57.95 | 60.35 | 81.65 |
| 6 | 26.45 | 35.95 | 45.70 | 55.55 | 60.40 | 63.55 | 66.15 | 89.50 |
| 7 | 28.90 | 39.20 | 50.30 | 60.60 | 65.60 | 69.15 | 71.95 | 97.35 |
| 8 | 31.40 | 42.50 | 54.85 | 65.60 | 70.75 | 74.75 | 77.75 | 105.20 |
| 9 | 33.85 | 45.75 | 59.45 | 70.65 | 75.95 | 80.35 | 83.55 | 113.05 |
| 10 | 36.30 | 49.00 | 64.00 | 75.70 | 81.15 | 85.95 | 89.35 | 120.90 |
| 11 | 38.20 | 52.90 | 67.90 | 79.60 | 84.90 | 89.90 | 93.55 | 126.55 |
| 12 | 40.10 | 56.80 | 71.75 | 83.55 | 88.70 | 93.85 | 97.70 | 132.20 |
| 13 | 42.05 | 60.70 | 75.65 | 87.45 | 92.45 | 97.80 | 101.90 | 137.90 |
| 14 | 43.95 | 64.60 | 79.55 | 91.40 | 96.20 | 101.75 | 106.05 | 143.55 |
| 15 | 45.85 | 68.50 | 83.45 | 95.30 | 100.00 | 105.65 | 110.20 | 149.20 |
| 16 | 47.75 | 72.35 | 87.30 | 99.20 | 103.75 | 109.60 | 114.40 | 154.85 |
| 17 | 49.65 | 76.25 | 91.20 | 103.15 | 107.50 | 113.55 | 118.55 | 160.50 |
| 18 | 51.60 | 80.15 | 95.10 | 107.05 | 111.25 | 117.50 | 122.75 | 166.20 |
| 19 | 53.50 | 84.05 | 98.95 | 111.00 | 115.05 | 121.45 | 126.90 | 171.85 |
| 20 | 55.40 | 87.95 | 102.85 | 114.90 | 118.80 | 125.40 | 131.10 | 177.50 |
| 21 | 57.35 | 91.90 | 106.75 | 119.15 | 123.15 | 129.90 | 135.85 | 183.95 |
| 22 | 59.35 | 95.85 | 110.65 | 123.45 | 127.50 | 134.45 | 140.60 | 190.40 |
| 23 | 61.30 | 99.80 | 114.50 | 127.70 | 131.80 | 138.95 | 145.40 | 196.85 |
| 24 | 63.30 | 103.75 | 118.40 | 132.00 | 136.15 | 143.45 | 150.15 | 203.25 |
| 25 | 65.25 | 107.70 | 122.30 | 136.25 | 140.50 | 147.95 | 154.90 | 209.70 |
| 26 | 67.20 | 111.65 | 126.20 | 140.50 | 144.85 | 152.50 | 159.65 | 216.15 |
| 27 | 69.20 | 115.60 | 130.10 | 144.80 | 149.20 | 157.00 | 164.40 | 222.60 |
| 28 | 71.15 | 119.55 | 133.95 | 149.05 | 153.50 | 161.50 | 169.20 | 229.05 |
| 29 | 73.15 | 123.50 | 137.85 | 153.35 | 157.85 | 166.00 | 173.95 | 235.50 |
| 30 | 75.10 | 127.45 | 141.75 | 157.60 | 162.20 | 170.55 | 178.70 | 241.95 |
| 31 | 77.05 | 131.40 | 145.65 | 161.85 | 166.55 | 175.05 | 183.45 | 248.40 |
| 32 | 79.05 | 135.35 | 149.55 | 166.15 | 170.90 | 179.55 | 188.20 | 254.80 |
| 33 | 81.00 | 139.30 | 153.40 | 170.40 | 175.20 | 184.05 | 193.00 | 261.25 |
| 34 | 83.00 | 143.25 | 157.30 | 174.70 | 179.55 | 188.60 | 197.75 | 267.70 |
| 35 | 84.95 | 147.20 | 161.20 | 178.95 | 183.90 | 193.10 | 202.50 | 274.15 |

COMMERCIAL PLUS ZONE/WEIGHT—Continued

| Maximum weight (pounds) | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| 36 | 87.15 | 151.10 | 165.60 | 183.75 | 188.95 | 198.30 | 207.90 | 281.50 |
| 37 | 89.00 | 154.85 | 169.85 | 188.35 | 193.95 | 203.50 | 213.35 | 288.85 |
| 38 | 91.10 | 158.75 | 174.15 | 193.10 | 198.75 | 208.50 | 218.65 | 296.05 |
| 39 | 93.35 | 162.65 | 178.55 | 197.75 | 203.40 | 213.30 | 224.10 | 303.45 |
| 40 | 95.35 | 166.30 | 182.90 | 202.55 | 208.35 | 218.45 | 229.55 | 310.80 |
| 41 | 97.25 | 170.25 | 187.15 | 207.10 | 213.40 | 223.65 | 234.90 | 318.00 |
| 42 | 98.95 | 174.15 | 191.40 | 211.75 | 218.40 | 228.80 | 240.20 | 325.25 |
| 43 | 101.25 | 177.90 | 195.65 | 216.35 | 223.25 | 233.80 | 245.70 | 332.60 |
| 44 | 103.05 | 181.80 | 200.00 | 221.05 | 228.05 | 238.75 | 251.00 | 339.85 |
| 45 | 105.05 | 185.65 | 204.15 | 225.55 | 232.95 | 243.85 | 256.50 | 347.30 |
| 46 | 107.10 | 189.40 | 208.70 | 230.40 | 237.80 | 248.80 | 261.85 | 354.55 |
| 47 | 109.35 | 193.25 | 212.90 | 235.00 | 242.70 | 253.85 | 267.25 | 361.85 |
| 48 | 111.25 | 197.20 | 217.10 | 239.45 | 247.60 | 258.90 | 272.65 | 369.15 |
| 49 | 113.20 | 200.90 | 221.45 | 244.15 | 252.65 | 264.10 | 278.10 | 376.55 |
| 50 | 115.65 | 204.85 | 225.80 | 248.90 | 257.40 | 268.90 | 283.45 | 383.75 |
| 51 | 117.65 | 208.75 | 230.05 | 253.45 | 262.20 | 273.90 | 288.10 | 390.05 |
| 52 | 119.70 | 212.40 | 234.25 | 258.00 | 267.30 | 279.05 | 294.30 | 398.50 |
| 53 | 121.60 | 216.35 | 238.65 | 262.65 | 272.20 | 284.10 | 299.70 | 405.75 |
| 54 | 123.80 | 220.25 | 242.85 | 267.15 | 277.05 | 289.15 | 305.05 | 413.05 |
| 55 | 126.25 | 225.30 | 247.30 | 271.90 | 281.90 | 294.05 | 310.40 | 420.30 |
| 56 | 128.90 | 229.20 | 251.50 | 276.40 | 286.75 | 299.05 | 315.85 | 427.65 |
| 57 | 131.10 | 233.05 | 255.80 | 281.00 | 291.60 | 304.05 | 321.20 | 434.85 |
| 58 | 133.35 | 236.75 | 260.05 | 285.50 | 296.60 | 309.10 | 326.60 | 442.15 |
| 59 | 135.20 | 240.60 | 264.30 | 290.10 | 301.60 | 314.15 | 331.95 | 449.45 |
| 60 | 137.00 | 244.45 | 268.65 | 294.65 | 306.45 | 319.10 | 337.35 | 456.75 |
| 61 | 138.95 | 248.40 | 273.15 | 299.45 | 311.35 | 324.10 | 342.75 | 464.05 |
| 62 | 141.10 | 252.10 | 277.30 | 303.85 | 316.15 | 328.95 | 348.25 | 471.50 |
| 63 | 143.45 | 255.95 | 281.60 | 308.45 | 321.10 | 334.10 | 353.70 | 478.85 |
| 64 | 145.35 | 259.75 | 285.80 | 312.90 | 326.05 | 339.10 | 359.10 | 486.15 |
| 65 | 147.85 | 263.60 | 290.10 | 317.45 | 330.90 | 343.95 | 364.40 | 493.35 |
| 66 | 150.60 | 267.55 | 294.50 | 322.15 | 335.80 | 349.00 | 369.75 | 500.55 |
| 67 | 152.35 | 271.30 | 298.85 | 326.75 | 340.55 | 353.80 | 375.20 | 507.95 |
| 68 | 154.35 | 275.15 | 303.10 | 331.15 | 345.65 | 359.00 | 380.70 | 515.45 |
| 69 | 156.80 | 279.05 | 307.35 | 335.70 | 350.40 | 363.85 | 385.85 | 522.45 |
| 70 | 159.65 | 282.90 | 311.70 | 340.25 | 355.35 | 368.80 | 391.30 | 529.80 |

COMMERCIAL PLUS FLAT RATE ENVELOPE

| | ($) |
|---|---|
| Commercial Plus Regular Flat Rate Envelope, per piece | 22.75 |
| Commercial Plus Legal Flat Rate Envelope, per piece | 22.95 |
| Commercial Plus Padded Flat Rate Envelope, per piece | 23.25 |

*Commercial Plus Dimensional Weight*

In Zones 1–9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

*Pickup On Demand Service*

Add $24.00 for each Pickup On Demand stop.

*Sunday/Holiday Delivery*

Add $12.50 for requesting Sunday or holiday delivery.

*10:30 a.m. Delivery*

Add $5.00 for requesting delivery by 10:30 a.m.

*IMpb Noncompliance Fee*

Add $0.20 for each IMpb-noncompliant parcel paying commercial prices, unless the eVS Unmanifested Fee was already assessed on that parcel.

*eVS Unmanifested Fee*

Add $0.20 for each unmanifested parcel paying commercial prices, unless the IMpb Noncompliance Fee was already assessed on that parcel.

**2110 Priority Mail**

2110.1 Description

a. Priority Mail service provides expeditious handling and transportation.

b. Any matter eligible for mailing may, at the option of the mailer, be mailed by Priority Mail service for expeditious handling and transportation.

c. Priority Mail pieces are sealed against postal inspection and shall not be opened except as authorized by law.

d. Priority Mail pieces that are undeliverable-as-addressed are entitled to be forwarded or returned to the sender without additional charge.

e. Up to $50.00 of General Insurance coverage is included at no additional cost in the price of Priority Mail pieces that bear an Intelligent Mail package barcode or retail tracking barcode. This does not apply to Priority Mail pieces sent non-prepaid returns, Priority Mail Open and Distribute, or Premium Forwarding Service.

f. Up to $100.00 of General Insurance coverage is included at no additional cost in the price of Priority Mail pieces that bear an Intelligent Mail package barcode and for which the mailer pays Commercial Plus prices or uses ePostage, Electronic Verification System, Hardcopy Manifest, or an approved Manifest Mailing System. This does not apply to Priority Mail pieces sent using non-prepaid returns, Priority Mail Open and Distribute, or Premium Forwarding Service.

g. Return parcels may be sent without prepayment of postage if authorized by the returns customer, who agrees to pay the postage.

2110.2 Size and Weight Limitations

| | Length | Height | Thickness | Weight |
|---|---|---|---|---|
| Minimum | large enough to accommodate postage, address, and other required elements on the address side | | | none. |
| Maximum | ..... | ..... | ..... | 70 pounds.[1] |
| Flat Rate Envelope | Nominal Sizes:<br>Regular: 9.5 x 12.5 inches.<br>Padded: 10 x 13 inches.<br>Legal: 9.5 x 15.0 inches. | | | |
| Flat Rate Box | Nominal Sizes:<br>Large: 12 x 12 x 5.5 inches or 11. 75 x 3 x 23.6875 inches—approximately ½ cu. ft.<br>Medium: 11.875 x 3.375 x 13.625 inches or 11 x 8.5 x 5.5 inches—approximately ⅓ cu. ft.<br>Small: 8.625 x 5.375 x 1.625 inches—approximately 1/20 cu. ft. | | | |
| Regional Rate Box A | Outside Dimensions:<br>Top Loaded: 10.125 x 7.125 x 5.0 inches.<br>Side Loaded: 13.0625 x 11.0625 x 2.5 inches. | | | 15 pounds. |
| Regional Rate Box B | Outside Dimensions:<br>Top Loaded: 12.25 x 10.5 x 5.5 inches.<br>Side Loaded: 16.25 x 14.5 x 3 inches. | | | 20 pounds. |
| Commercial Plus Cubic | Various, not to exceed 0.1, 0.2, 0.3, 0.4, or 0.5 cubic feet | | | 20 pounds. |
| Open and Distribute | Half Tray: 15 x 11.75 x 4.75 inches<br>Full Tray: 25.875 x 11.75 x 4.75 inches.<br>EMM Tray: 12.375 x 6.4375 x 25.25 inches.<br>Flat Tub: 19.375 x 13.8125 x 12.25 inches. | | | 70 pounds.[1] |
| All Others | 108 inches in combined length and girth | | | 70 pounds.[1] |

**Notes**

[1] An overweight item charge of $100.00 applies to pieces found in the postal network that exceed the 70-pound maximum weight limitation. Such items are nonmailable and will not be delivered. As described in the Domestic Mail Manual, this charge is payable before release of the item, unless the item is picked up at the same facility where it was entered.

2110.3 Minimum Volume Requirements

| | Minimum volume requirements |
|---|---|
| Commercial Plus Cubic Priority Mail | 50 pounds or 200 pieces (Permit Imprint only). |
| All Other Priority Mail | None. |

2110.4 Price Categories

The following price categories are available for the product specified in this section:

- Retail
  - Zone/Weight—Prices are based on weight and zone
  - Flat Rate Envelopes—Envelope provided or approved by the Postal Service
  - Flat Rate Boxes—Boxes provided or approved by the Postal Service
  - Regional Rate Boxes
  - Dimensional Weight—Applies to parcels in zones local through 9 that exceed one cubic foot
  - *Loyalty Program—Applies to qualifying business customers who use Click-N-Ship*
- Commercial Base—Available to mailers who use specifically authorized postage payment methods [1]
  - Zone/Weight—Prices are based on weight and zone
  - Flat Rate Envelopes—Envelope provided or approved by the Postal Service
  - Flat Rate Boxes—Boxes provided or approved by the Postal Service
  - Regional Rate Boxes

[1] *Under the Loyalty Program, Gold Tier customers are eligible for Commercial Base prices.*

- Dimensional Weight—Applies to parcels in zones local through 9 that exceed one cubic foot
- Commercial Plus—Available to mailers who use specifically authorized postage payment methods and whose annual volume exceeds 50,000 pieces or 600 open and distribute containers for parcels, or 5,000 letter-sized pieces excluding the Padded Flat Rate Envelope
  - Zone/Weight—Prices are based on weight and zone
  - Flat Rate Envelopes—Envelope provided or approved by the Postal Service
  - Flat Rate Boxes—Boxes provided or approved by the Postal Service
  - Regional Rate Boxes
  - Dimensional Weight—Applies to parcels in zones local through 9 that exceed one cubic foot
- Commercial Plus Cubic—Prices are available to customers who use specifically authorized postage payment methods and whose annual Priority Mail volume exceeds 50,000 pieces
  - Zone/Cubic Volume
- Open and Distribute (PMOD)—Prices are available to customers who use specifically authorized postage payment methods
  - Processing Facilities—Received at designated processing facilities, or other equivalent facility
- Half Tray, Full Tray, EMM Tray, or Flat Tub
  - DDU—Received at designated Destination Delivery Unit, or other equivalent facility
- Half Tray, Full Tray, EMM Tray, or Flat Tub

2110.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Pickup On Demand Service
- Ancillary Services (1505)
  - Address Correction Service (1505.1)
  - Business Reply Mail (1505.3)
  - Certified Mail (1505.5)
  - Certificate of Mailing (1505.6)
  - Collect On Delivery (1505.7)
  - USPS Tracking (1505.8)
  - Insurance (1505.9)
  - Registered Mail (1505.12)
  - Return Receipt (1505.13)
  - Return Receipt for Merchandise (1505.14)
  - Signature Confirmation (1505.17)
  - Special Handling (1505.18)
- Competitive Ancillary Services (2545)
  - Adult Signature (2545.1)
  - Package Intercept Service (2545.2)
  - Premium Data Retention and Retrieval Service (2545.3)

2110.6 Prices

RETAIL PRIORITY MAIL ZONE/WEIGHT

| Maximum weight (pounds) | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| 1 | $7.50 | $7.85 | $8.00 | $8.25 | $8.45 | $8.85 | $9.60 | $14.05 |
| 2 | 8.25 | 8.70 | 9.90 | 10.90 | 11.75 | 13.65 | 14.90 | 22.30 |
| 3 | 8.70 | 9.70 | 10.90 | 12.55 | 13.25 | 16.90 | 20.00 | 29.85 |
| 4 | 9.20 | 10.55 | 11.55 | 13.95 | 17.25 | 20.80 | 23.15 | 34.55 |
| 5 | 10.20 | 11.30 | 12.25 | 14.40 | 19.65 | 23.85 | 26.70 | 40.00 |
| 6 | 10.95 | 11.55 | 12.80 | 15.70 | 21.85 | 25.90 | 29.20 | 45.15 |
| 7 | 11.95 | 13.10 | 15.40 | 18.95 | 24.20 | 28.95 | 32.85 | 50.75 |
| 8 | 12.30 | 14.50 | 17.10 | 22.55 | 27.45 | 32.15 | 36.75 | 56.80 |
| 9 | 12.80 | 15.65 | 18.95 | 25.75 | 29.85 | 34.70 | 40.90 | 63.20 |
| 10 | 13.60 | 16.80 | 20.40 | 27.90 | 32.30 | 38.15 | 44.55 | 68.90 |
| 11 | 14.95 | 18.50 | 22.50 | 29.95 | 36.30 | 44.15 | 51.25 | 76.25 |
| 12 | 16.25 | 19.85 | 24.20 | 33.20 | 39.50 | 47.75 | 54.50 | 81.80 |
| 13 | 17.25 | 20.95 | 25.55 | 35.10 | 42.40 | 49.65 | 57.00 | 84.75 |
| 14 | 18.30 | 22.35 | 27.20 | 37.35 | 44.75 | 52.45 | 59.95 | 89.00 |
| 15 | 18.95 | 23.60 | 28.75 | 39.50 | 46.70 | 53.65 | 61.50 | 91.55 |
| 16 | 19.60 | 24.90 | 30.30 | 41.70 | 49.30 | 56.60 | 64.90 | 96.55 |
| 17 | 20.50 | 26.20 | 31.90 | 43.85 | 51.80 | 59.60 | 68.30 | 101.65 |
| 18 | 20.85 | 27.10 | 33.20 | 46.00 | 54.55 | 62.50 | 71.85 | 106.85 |
| 19 | 21.45 | 27.75 | 33.95 | 47.30 | 55.60 | 63.85 | 73.30 | 111.90 |
| 20 | 22.35 | 28.10 | 34.50 | 47.95 | 56.95 | 66.10 | 76.75 | 117.05 |
| 21 | 23.10 | 28.45 | 35.00 | 48.80 | 57.90 | 67.20 | 78.50 | 120.70 |
| 22 | 23.65 | 29.10 | 35.85 | 49.95 | 59.20 | 68.85 | 80.35 | 123.70 |
| 23 | 24.20 | 29.70 | 36.45 | 50.75 | 60.30 | 70.20 | 81.80 | 125.80 |
| 24 | 24.75 | 30.30 | 37.30 | 51.90 | 61.55 | 71.95 | 83.80 | 128.95 |
| 25 | 25.00 | 30.80 | 38.80 | 54.25 | 62.30 | 73.75 | 85.20 | 131.05 |
| 26 | 26.00 | 31.40 | 40.25 | 55.35 | 63.85 | 75.55 | 87.90 | 135.25 |
| 27 | 26.80 | 31.85 | 41.45 | 56.45 | 64.80 | 77.35 | 91.20 | 140.30 |
| 28 | 27.60 | 32.25 | 42.70 | 57.85 | 65.60 | 79.10 | 94.60 | 145.60 |
| 29 | 28.45 | 32.65 | 43.75 | 58.70 | 66.75 | 80.90 | 97.20 | 149.50 |
| 30 | 29.30 | 33.05 | 44.80 | 59.50 | 68.60 | 82.80 | 99.30 | 152.80 |
| 31 | 30.15 | 33.40 | 45.55 | 60.30 | 69.65 | 84.55 | 101.25 | 157.10 |
| 32 | 30.50 | 34.15 | 46.30 | 60.95 | 70.50 | 86.35 | 103.35 | 160.30 |
| 33 | 31.05 | 35.05 | 47.45 | 61.75 | 71.90 | 88.15 | 105.25 | 163.35 |
| 34 | 31.30 | 36.00 | 48.65 | 63.10 | 73.55 | 90.00 | 107.25 | 166.35 |
| 35 | 31.60 | 36.85 | 49.25 | 64.45 | 75.50 | 91.75 | 109.00 | 169.15 |
| 36 | 31.95 | 37.90 | 49.95 | 65.80 | 77.50 | 93.00 | 110.95 | 172.05 |
| 37 | 32.25 | 38.55 | 50.65 | 67.00 | 79.50 | 94.20 | 112.75 | 174.90 |
| 38 | 32.65 | 39.55 | 51.30 | 68.30 | 81.70 | 95.35 | 114.55 | 177.75 |
| 39 | 32.95 | 40.45 | 51.95 | 69.75 | 83.65 | 97.80 | 116.25 | 180.40 |
| 40 | 33.35 | 41.30 | 52.65 | 71.25 | 85.00 | 100.00 | 117.90 | 182.90 |
| 41 | 33.65 | 42.10 | 53.25 | 71.90 | 86.35 | 102.15 | 119.65 | 187.00 |
| 42 | 33.90 | 42.85 | 53.80 | 73.45 | 87.90 | 103.45 | 121.20 | 189.60 |

RETAIL PRIORITY MAIL ZONE/WEIGHT—Continued

| Maximum weight (pounds) | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| 43 | 34.35 | 43.55 | 54.30 | 75.10 | 90.05 | 104.80 | 122.75 | 191.95 |
| 44 | 34.55 | 44.25 | 55.00 | 76.60 | 91.45 | 106.00 | 124.20 | 194.30 |
| 45 | 34.80 | 44.75 | 55.35 | 78.40 | 92.45 | 107.20 | 125.80 | 196.70 |
| 46 | 35.05 | 45.05 | 55.95 | 79.80 | 93.45 | 108.35 | 127.25 | 199.10 |
| 47 | 35.35 | 45.50 | 56.50 | 81.60 | 94.50 | 109.55 | 128.70 | 201.20 |
| 48 | 35.70 | 45.85 | 57.05 | 83.20 | 95.75 | 110.60 | 130.10 | 203.40 |
| 49 | 35.90 | 46.15 | 57.45 | 84.75 | 97.00 | 111.75 | 131.40 | 205.45 |
| 50 | 36.05 | 46.45 | 57.90 | 86.40 | 98.30 | 113.20 | 132.70 | 207.60 |
| 51 | 36.20 | 46.90 | 58.40 | 87.85 | 99.65 | 114.85 | 133.95 | 211.15 |
| 52 | 36.65 | 47.20 | 58.80 | 88.55 | 100.70 | 116.55 | 135.50 | 213.75 |
| 53 | 37.30 | 47.50 | 59.15 | 89.25 | 101.55 | 118.40 | 137.30 | 216.50 |
| 54 | 37.75 | 47.70 | 59.60 | 90.00 | 102.30 | 120.20 | 139.25 | 219.50 |
| 55 | 38.40 | 48.05 | 59.90 | 90.65 | 103.05 | 122.05 | 141.10 | 222.45 |
| 56 | 38.95 | 48.35 | 60.25 | 91.25 | 103.80 | 123.80 | 142.40 | 224.50 |
| 57 | 39.50 | 48.50 | 60.60 | 91.75 | 104.55 | 125.70 | 143.45 | 226.15 |
| 58 | 40.15 | 48.75 | 61.00 | 92.40 | 105.15 | 127.40 | 144.55 | 227.80 |
| 59 | 40.75 | 48.95 | 61.30 | 92.95 | 105.75 | 128.15 | 145.70 | 229.65 |
| 60 | 41.30 | 49.15 | 61.90 | 93.40 | 106.30 | 128.90 | 146.60 | 231.15 |
| 61 | 41.90 | 49.40 | 63.00 | 93.90 | 106.90 | 129.65 | 148.60 | 234.35 |
| 62 | 42.35 | 49.50 | 63.75 | 94.40 | 107.45 | 130.25 | 151.05 | 238.05 |
| 63 | 43.15 | 49.75 | 64.85 | 94.80 | 108.00 | 130.85 | 153.45 | 241.90 |
| 64 | 43.60 | 51.30 | 65.80 | 95.25 | 108.45 | 131.50 | 155.70 | 245.55 |
| 65 | 44.20 | 51.45 | 66.65 | 95.60 | 108.85 | 132.10 | 158.25 | 249.45 |
| 66 | 44.75 | 51.65 | 67.75 | 96.05 | 109.35 | 132.55 | 160.45 | 253.00 |
| 67 | 45.50 | 51.75 | 68.90 | 96.35 | 109.65 | 133.10 | 162.60 | 256.30 |
| 68 | 46.00 | 51.85 | 69.75 | 96.60 | 111.05 | 133.60 | 164.35 | 259.10 |
| 69 | 46.60 | 51.90 | 70.60 | 96.85 | 112.40 | 133.95 | 166.10 | 261.80 |
| 70 | 47.15 | 52.05 | 71.75 | 97.20 | 113.80 | 134.40 | 167.90 | 264.60 |

RETAIL FLAT RATE ENVELOPES [1]

| | ($) |
|---|---|
| Retail Regular Flat Rate Envelope, per piece | $7.75 |
| Retail Legal Flat Rate Envelope, per piece | 8.05 |
| Retail Padded Flat Rate Envelope, per piece | 8.40 |

**Notes**
[1] The price for Regular, Legal, or Padded Flat Rate Envelopes also applies to sales of Regular, Legal, or Padded Flat Rate Envelopes, respectively, marked with Forever postage, at the time the envelopes are purchased.

RETAIL FLAT RATE BOXES [1]

| Size | Delivery to domestic address ($) | Delivery to APO/FPO/DPO address ($) |
|---|---|---|
| Small Flat Rate Box | $8.30 | $8.30 |
| Medium Flat Rate Boxes | 15.05 | 15.05 |
| Large Flat Rate Boxes | 21.10 | 19.60 |

**Notes**
[1] The price for Small, Medium, or Large Flat Rate Boxes also applies to sales of Small, Medium, or Large Flat Rate Boxes, respectively, marked with Forever postage, at the time the boxes are purchased.

REGIONAL RATE BOXES

| Size | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| A | $9.98 | $10.22 | $10.51 | $11.22 | $12.72 | $13.43 | $14.40 | $20.99 |
| B | 10.37 | 10.81 | 11.72 | 13.83 | 19.02 | 21.51 | 24.19 | 36.68 |

*Retail Dimensional Weight*

In Zones 1–9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

*Loyalty Program*

*Upon the initiation of the Loyalty Program, all USPS business customers who use Click-N-Ship will be automatically enrolled in the Basic tier of the Loyalty Program, thereby earning a $40 credit for every $500 combined spent at Priority Mail Express Retail and Priority Mail Retail rates.*

*Beginning on January 1, 2021, and on every January 1 thereafter, all USPS business customers who use Click-N-Ship will be enrolled in one of the following three tiers of the Loyalty Program, based on their combined shipping spend at Priority Mail Express Retail and Priority Mail Retail rates in the previous calendar year, as follows:*

- *Basic (no minimum spend): Earn $40 credit for every $500 spent*
- *Silver (at least $10,000 spend): Earn $50 credit for every $500 spent*
- *Gold (at least $20,000 spend): Qualify for Commercial Base Pricing*

*In the first year of the Loyalty Program, any new USPS business customer who uses Click-N-Ship will receive a one-time $40 ''Welcome Bonus'' credit upon shipping at least $500 combined at Priority Mail Express Retail and Priority Mail Retail rates.*

*All participants in the Loyalty Program will be eligible to receive an additional one-time $20 credit for shipping during the first two months of the program, which will be applied once participants ship at least $500 combined at Priority Mail Express Retail and Priority Mail Retail rates.*

*All credits must be redeemed within one year from the date of issuance.*

COMMERCIAL BASE PRIORITY MAIL ZONE/WEIGHT

| Maximum weight (pounds) | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| 1 | $7.02 | $7.35 | $7.56 | $7.80 | $7.98 | $8.15 | $8.42 | $11.40 |
| 2 | 7.64 | 7.84 | 8.12 | 8.76 | 9.99 | 10.54 | 11.19 | 17.45 |
| 3 | 7.84 | 8.23 | 8.59 | 9.54 | 12.15 | 13.49 | 15.74 | 23.67 |
| 4 | 7.94 | 8.45 | 9.07 | 10.33 | 14.16 | 16.06 | 18.14 | 28.50 |
| 5 | 8.04 | 8.50 | 9.39 | 10.64 | 16.14 | 18.46 | 21.01 | 33.17 |
| 6 | 8.15 | 8.54 | 9.50 | 14.18 | 18.47 | 21.45 | 24.52 | 38.01 |
| 7 | 8.39 | 9.69 | 9.74 | 15.89 | 20.46 | 24.18 | 27.55 | 42.68 |
| 8 | 8.45 | 10.17 | 11.49 | 17.35 | 22.47 | 26.63 | 30.94 | 47.91 |
| 9 | 9.28 | 10.56 | 11.97 | 18.60 | 24.45 | 28.84 | 34.40 | 53.28 |
| 10 | 9.76 | 11.10 | 12.16 | 20.30 | 26.67 | 32.03 | 37.78 | 57.94 |
| 11 | 11.30 | 13.53 | 14.50 | 22.57 | 29.15 | 35.50 | 41.67 | 63.30 |
| 12 | 12.00 | 14.39 | 16.89 | 24.18 | 31.81 | 38.40 | 44.73 | 67.86 |
| 13 | 12.62 | 15.22 | 17.68 | 25.47 | 34.14 | 39.95 | 46.31 | 70.29 |
| 14 | 13.27 | 16.06 | 18.62 | 26.96 | 36.06 | 42.18 | 48.61 | 73.77 |
| 15 | 13.79 | 16.90 | 19.53 | 28.34 | 37.45 | 42.99 | 49.88 | 75.72 |
| 16 | 14.39 | 17.97 | 20.78 | 30.03 | 39.95 | 45.84 | 53.13 | 79.88 |
| 17 | 14.85 | 18.80 | 21.77 | 31.50 | 41.98 | 48.22 | 55.95 | 84.09 |
| 18 | 15.14 | 19.38 | 22.75 | 32.91 | 44.20 | 50.60 | 58.75 | 88.33 |
| 19 | 15.49 | 19.83 | 23.27 | 33.78 | 46.18 | 52.95 | 61.54 | 92.52 |
| 20 | 16.10 | 20.14 | 23.74 | 34.40 | 47.38 | 54.93 | 64.39 | 96.78 |
| 21 | 16.81 | 20.62 | 24.29 | 35.01 | 47.75 | 55.45 | 65.22 | 98.85 |
| 22 | 17.34 | 21.18 | 25.10 | 35.71 | 48.08 | 55.88 | 65.97 | 100.00 |
| 23 | 17.86 | 21.68 | 25.70 | 36.36 | 48.34 | 56.26 | 66.36 | 100.59 |
| 24 | 18.59 | 22.60 | 27.16 | 37.79 | 49.36 | 57.73 | 67.98 | 103.05 |
| 25 | 19.30 | 23.40 | 28.88 | 39.06 | 50.09 | 59.17 | 69.16 | 104.82 |
| 26 | 20.47 | 25.09 | 31.90 | 41.14 | 51.31 | 60.63 | 71.33 | 108.10 |
| 27 | 21.69 | 26.22 | 33.84 | 44.84 | 52.00 | 62.04 | 74.00 | 112.19 |
| 28 | 22.35 | 26.57 | 34.80 | 46.01 | 52.71 | 63.48 | 76.78 | 116.40 |
| 29 | 23.04 | 26.84 | 35.74 | 46.62 | 53.59 | 64.94 | 78.85 | 119.51 |
| 30 | 23.72 | 27.23 | 36.58 | 47.26 | 55.09 | 66.36 | 80.54 | 122.10 |
| 31 | 24.39 | 27.50 | 37.15 | 47.86 | 55.89 | 67.83 | 82.19 | 125.60 |
| 32 | 24.67 | 28.08 | 37.77 | 48.42 | 56.62 | 69.29 | 83.87 | 128.16 |
| 33 | 25.05 | 28.86 | 38.71 | 49.06 | 57.72 | 70.72 | 85.41 | 130.53 |
| 34 | 25.28 | 29.61 | 39.69 | 50.12 | 59.09 | 72.17 | 87.01 | 133.00 |
| 35 | 25.56 | 30.31 | 40.26 | 51.18 | 60.67 | 73.62 | 88.51 | 135.26 |
| 36 | 25.88 | 31.19 | 40.79 | 52.29 | 62.20 | 74.62 | 90.01 | 137.57 |
| 37 | 26.15 | 31.77 | 41.38 | 53.22 | 63.83 | 75.57 | 91.49 | 139.84 |
| 38 | 26.41 | 32.54 | 41.90 | 54.28 | 65.60 | 76.44 | 92.94 | 142.07 |
| 39 | 26.66 | 33.30 | 42.38 | 55.40 | 67.15 | 78.45 | 94.38 | 144.27 |
| 40 | 26.94 | 34.00 | 42.93 | 56.56 | 68.23 | 80.21 | 95.67 | 146.22 |
| 41 | 27.23 | 34.57 | 43.39 | 57.06 | 69.38 | 81.92 | 97.05 | 149.51 |
| 42 | 27.43 | 34.83 | 43.77 | 58.02 | 70.60 | 83.04 | 98.38 | 151.55 |
| 43 | 27.75 | 35.09 | 44.16 | 58.98 | 72.29 | 84.07 | 99.64 | 153.49 |
| 44 | 27.94 | 35.34 | 44.54 | 59.93 | 73.44 | 85.07 | 100.76 | 155.26 |
| 45 | 28.12 | 35.59 | 44.94 | 60.89 | 74.25 | 85.99 | 102.04 | 157.22 |
| 46 | 28.37 | 35.85 | 45.33 | 61.85 | 75.08 | 86.92 | 103.27 | 159.09 |

COMMERCIAL BASE PRIORITY MAIL ZONE/WEIGHT—Continued

| Maximum weight (pounds) | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| 47 | 28.58 | 36.10 | 45.71 | 62.81 | 75.86 | 87.91 | 104.41 | 160.87 |
| 48 | 28.82 | 36.36 | 46.10 | 63.76 | 76.84 | 88.75 | 105.52 | 162.62 |
| 49 | 29.04 | 36.60 | 46.49 | 64.72 | 77.89 | 89.68 | 106.59 | 164.21 |
| 50 | 29.16 | 36.86 | 46.88 | 65.68 | 78.98 | 90.82 | 107.71 | 165.97 |
| 51 | 29.59 | 37.12 | 47.25 | 66.80 | 80.06 | 92.12 | 108.71 | 168.85 |
| 52 | 30.03 | 37.38 | 47.64 | 67.27 | 80.84 | 93.51 | 110.00 | 170.82 |
| 53 | 30.59 | 37.62 | 48.03 | 67.82 | 81.52 | 95.04 | 111.40 | 173.01 |
| 54 | 31.03 | 37.89 | 48.41 | 68.41 | 82.10 | 96.40 | 112.96 | 175.43 |
| 55 | 31.52 | 38.13 | 48.80 | 68.84 | 82.78 | 97.93 | 114.48 | 177.79 |
| 56 | 31.95 | 38.39 | 49.19 | 69.36 | 83.33 | 99.31 | 115.65 | 179.63 |
| 57 | 32.46 | 38.64 | 49.58 | 69.77 | 83.96 | 100.82 | 116.67 | 181.24 |
| 58 | 32.95 | 38.89 | 49.96 | 70.21 | 84.46 | 102.15 | 117.64 | 182.70 |
| 59 | 33.42 | 39.15 | 50.34 | 70.64 | 84.94 | 102.85 | 118.50 | 184.07 |
| 60 | 33.84 | 39.40 | 50.73 | 71.03 | 85.36 | 103.45 | 119.35 | 185.36 |
| 61 | 34.39 | 39.65 | 51.12 | 71.39 | 85.84 | 104.05 | 120.95 | 187.88 |
| 62 | 34.81 | 39.91 | 51.50 | 71.70 | 86.24 | 104.51 | 122.88 | 190.84 |
| 63 | 35.44 | 40.17 | 51.90 | 72.08 | 86.73 | 105.01 | 124.85 | 193.90 |
| 64 | 35.75 | 40.41 | 52.28 | 72.40 | 87.12 | 105.49 | 126.76 | 196.89 |
| 65 | 36.27 | 40.67 | 52.68 | 72.62 | 87.37 | 106.02 | 128.74 | 199.97 |
| 66 | 36.74 | 40.93 | 53.05 | 72.95 | 87.81 | 106.34 | 130.61 | 202.87 |
| 67 | 37.29 | 41.18 | 53.95 | 73.21 | 88.09 | 106.76 | 132.35 | 205.54 |
| 68 | 37.73 | 41.43 | 54.63 | 73.41 | 89.20 | 107.32 | 133.75 | 207.72 |
| 69 | 38.24 | 41.69 | 55.33 | 73.63 | 90.27 | 107.82 | 135.16 | 209.94 |
| 70 | 38.64 | 41.94 | 56.20 | 73.86 | 91.36 | 108.21 | 136.62 | 212.19 |

COMMERCIAL BASE FLAT RATE ENVELOPE

| | ($) |
|---|---|
| Commercial Base Regular Flat Rate Envelope, per piece | $7.15 |
| Commercial Base Legal Flat Rate Envelope, per piece | 7.45 |
| Commercial Base Padded Flat Rate Envelope, per piece | 7.75 |

COMMERCIAL BASE FLAT RATE BOX

| Size | Delivery to domestic address ($) | Delivery to APO/FPO/ DPO address ($) |
|---|---|---|
| Small Flat Rate Box | $7.65 | $7.65 |
| Regular Flat Rate Boxes | 13.20 | 13.20 |
| Large Flat Rate Boxes | 18.30 | 16.80 |

COMMERCIAL BASE REGIONAL RATE BOXES

| Size | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| A | $7.68 | $7.92 | $8.21 | $8.92 | $10.42 | $11.13 | $12.10 | $18.69 |
| B | 8.07 | 8.51 | 9.42 | 11.53 | 16.72 | 19.21 | 21.89 | 34.38 |

*Commercial Base Dimensional Weight*

In Zones 1–9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

COMMERCIAL PLUS PRIORITY MAIL ZONE/WEIGHT

| Maximum weight (pounds) | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| 0.5 | $7.02 | $7.35 | $7.56 | $7.80 | $7.98 | $8.15 | $8.42 | $11.40 |
| 1 | 7.02 | 7.35 | 7.56 | 7.80 | 7.98 | 8.15 | 8.42 | 11.40 |
| 2 | 7.64 | 7.84 | 8.12 | 8.76 | 9.99 | 10.54 | 11.19 | 17.45 |
| 3 | 7.84 | 8.23 | 8.59 | 9.54 | 12.15 | 13.49 | 15.74 | 23.67 |
| 4 | 7.94 | 8.45 | 9.07 | 10.33 | 14.16 | 16.06 | 18.14 | 28.50 |
| 5 | 8.04 | 8.50 | 9.39 | 10.64 | 16.14 | 18.46 | 21.01 | 33.17 |
| 6 | 8.15 | 8.54 | 9.50 | 14.18 | 18.47 | 21.45 | 24.52 | 38.01 |
| 7 | 8.39 | 9.69 | 9.74 | 15.89 | 20.46 | 24.18 | 27.55 | 42.68 |
| 8 | 8.45 | 10.17 | 11.49 | 17.35 | 22.47 | 26.63 | 30.94 | 47.91 |
| 9 | 9.28 | 10.56 | 11.97 | 18.60 | 24.45 | 28.84 | 34.40 | 53.28 |
| 10 | 9.76 | 11.10 | 12.16 | 20.30 | 26.67 | 32.03 | 37.78 | 57.94 |
| 11 | 11.30 | 13.53 | 14.50 | 22.57 | 29.15 | 35.50 | 41.67 | 63.30 |
| 12 | 12.00 | 14.39 | 16.89 | 24.18 | 31.81 | 38.40 | 44.73 | 67.86 |
| 13 | 12.62 | 15.22 | 17.68 | 25.47 | 34.14 | 39.95 | 46.31 | 70.29 |
| 14 | 13.27 | 16.06 | 18.62 | 26.96 | 36.06 | 42.18 | 48.61 | 73.77 |
| 15 | 13.79 | 16.90 | 19.53 | 28.34 | 37.45 | 42.99 | 49.88 | 75.72 |
| 16 | 14.39 | 17.97 | 20.78 | 30.03 | 39.95 | 45.84 | 53.13 | 79.88 |
| 17 | 14.85 | 18.80 | 21.77 | 31.50 | 41.98 | 48.22 | 55.95 | 84.09 |
| 18 | 15.14 | 19.38 | 22.75 | 32.91 | 44.20 | 50.60 | 58.75 | 88.33 |
| 19 | 15.49 | 19.83 | 23.27 | 33.78 | 46.18 | 52.95 | 61.54 | 92.52 |
| 20 | 16.10 | 20.14 | 23.74 | 34.40 | 47.38 | 54.93 | 64.39 | 96.78 |
| 21 | 16.81 | 20.62 | 24.29 | 35.01 | 47.75 | 55.45 | 65.22 | 98.85 |
| 22 | 17.34 | 21.18 | 25.10 | 35.71 | 48.08 | 55.88 | 65.97 | 100.00 |
| 23 | 17.86 | 21.68 | 25.70 | 36.36 | 48.34 | 56.26 | 66.36 | 100.59 |
| 24 | 18.59 | 22.60 | 27.16 | 37.79 | 49.36 | 57.73 | 67.98 | 103.05 |
| 25 | 19.30 | 23.40 | 28.88 | 39.06 | 50.09 | 59.17 | 69.16 | 104.82 |
| 26 | 20.47 | 25.09 | 31.90 | 41.14 | 51.31 | 60.63 | 71.33 | 108.10 |
| 27 | 21.69 | 26.22 | 33.84 | 44.84 | 52.00 | 62.04 | 74.00 | 112.19 |
| 28 | 22.35 | 26.57 | 34.80 | 46.01 | 52.71 | 63.48 | 76.78 | 116.40 |
| 29 | 23.04 | 26.84 | 35.74 | 46.62 | 53.59 | 64.94 | 78.85 | 119.51 |
| 30 | 23.72 | 27.23 | 36.58 | 47.26 | 55.09 | 66.36 | 80.54 | 122.10 |
| 31 | 24.39 | 27.50 | 37.15 | 47.86 | 55.89 | 67.83 | 82.19 | 125.60 |
| 32 | 24.67 | 28.08 | 37.77 | 48.42 | 56.62 | 69.29 | 83.87 | 128.16 |
| 33 | 25.05 | 28.86 | 38.71 | 49.06 | 57.72 | 70.72 | 85.41 | 130.53 |
| 34 | 25.28 | 29.61 | 39.69 | 50.12 | 59.09 | 72.17 | 87.01 | 133.00 |
| 35 | 25.56 | 30.31 | 40.26 | 51.18 | 60.67 | 73.62 | 88.51 | 135.26 |
| 36 | 25.88 | 31.19 | 40.79 | 52.29 | 62.20 | 74.62 | 90.01 | 137.57 |
| 37 | 26.15 | 31.77 | 41.38 | 53.22 | 63.83 | 75.57 | 91.49 | 139.84 |
| 38 | 26.41 | 32.54 | 41.90 | 54.28 | 65.60 | 76.44 | 92.94 | 142.07 |
| 39 | 26.66 | 33.30 | 42.38 | 55.40 | 67.15 | 78.45 | 94.38 | 144.27 |
| 40 | 26.94 | 34.00 | 42.93 | 56.56 | 68.23 | 80.21 | 95.67 | 146.22 |
| 41 | 27.23 | 34.57 | 43.39 | 57.06 | 69.38 | 81.92 | 97.05 | 149.51 |
| 42 | 27.43 | 34.83 | 43.77 | 58.02 | 70.60 | 83.04 | 98.38 | 151.55 |
| 43 | 27.75 | 35.09 | 44.16 | 58.98 | 72.29 | 84.07 | 99.64 | 153.49 |
| 44 | 27.94 | 35.34 | 44.54 | 59.93 | 73.44 | 85.07 | 100.76 | 155.26 |
| 45 | 28.12 | 35.59 | 44.94 | 60.89 | 74.25 | 85.99 | 102.04 | 157.22 |
| 46 | 28.37 | 35.85 | 45.33 | 61.85 | 75.08 | 86.92 | 103.27 | 159.09 |
| 47 | 28.58 | 36.10 | 45.71 | 62.81 | 75.86 | 87.91 | 104.41 | 160.87 |
| 48 | 28.82 | 36.36 | 46.10 | 63.76 | 76.84 | 88.75 | 105.52 | 162.62 |
| 49 | 29.04 | 36.60 | 46.49 | 64.72 | 77.89 | 89.68 | 106.59 | 164.21 |
| 50 | 29.16 | 36.86 | 46.88 | 65.68 | 78.98 | 90.82 | 107.71 | 165.97 |
| 51 | 29.59 | 37.12 | 47.25 | 66.80 | 80.06 | 92.12 | 108.71 | 168.85 |
| 52 | 30.03 | 37.38 | 47.64 | 67.27 | 80.84 | 93.51 | 110.00 | 170.82 |
| 53 | 30.59 | 37.62 | 48.03 | 67.82 | 81.52 | 95.04 | 111.40 | 173.01 |
| 54 | 31.03 | 37.89 | 48.41 | 68.41 | 82.10 | 96.40 | 112.96 | 175.43 |
| 55 | 31.52 | 38.13 | 48.80 | 68.84 | 82.78 | 97.93 | 114.48 | 177.79 |
| 56 | 31.95 | 38.39 | 49.19 | 69.36 | 83.33 | 99.31 | 115.65 | 179.63 |
| 57 | 32.46 | 38.64 | 49.58 | 69.77 | 83.96 | 100.82 | 116.67 | 181.24 |
| 58 | 32.95 | 38.89 | 49.96 | 70.21 | 84.46 | 102.15 | 117.64 | 182.70 |
| 59 | 33.42 | 39.15 | 50.34 | 70.64 | 84.94 | 102.85 | 118.50 | 184.07 |
| 60 | 33.84 | 39.40 | 50.73 | 71.03 | 85.36 | 103.45 | 119.35 | 185.36 |
| 61 | 34.39 | 39.65 | 51.12 | 71.39 | 85.84 | 104.05 | 120.95 | 187.88 |
| 62 | 34.81 | 39.91 | 51.50 | 71.70 | 86.24 | 104.51 | 122.88 | 190.84 |
| 63 | 35.44 | 40.17 | 51.90 | 72.08 | 86.73 | 105.01 | 124.85 | 193.90 |
| 64 | 35.75 | 40.41 | 52.28 | 72.40 | 87.12 | 105.49 | 126.76 | 196.89 |
| 65 | 36.27 | 40.67 | 52.68 | 72.62 | 87.37 | 106.02 | 128.74 | 199.97 |
| 66 | 36.74 | 40.93 | 53.05 | 72.95 | 87.81 | 106.34 | 130.61 | 202.87 |
| 67 | 37.29 | 41.18 | 53.95 | 73.21 | 88.09 | 106.76 | 132.35 | 205.54 |
| 68 | 37.73 | 41.43 | 54.63 | 73.41 | 89.20 | 107.32 | 133.75 | 207.72 |
| 69 | 38.24 | 41.69 | 55.33 | 73.63 | 90.27 | 107.82 | 135.16 | 209.94 |

COMMERCIAL PLUS PRIORITY MAIL ZONE/WEIGHT—Continued

| Maximum weight (pounds) | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| 70 | 38.64 | 41.94 | 56.20 | 73.86 | 91.36 | 108.21 | 136.62 | 212.19 |

COMMERCIAL PLUS FLAT RATE ENVELOPE

| | ($) |
|---|---|
| Commercial Plus Regular Flat Rate Envelope, per piece | $7.15 |
| Commercial Plus Legal Flat Rate Envelope, per piece | 7.45 |
| Commercial Plus Padded Flat Rate Envelope, per piece | 7.75 |

COMMERCIAL PLUS FLAT RATE BOX

| Size | Delivery to domestic address ($) | Delivery to APO/FPO/DPO address ($) |
|---|---|---|
| Small Flat Rate Box | $7.65 | $7.65 |
| Medium Flat Rate Boxes | 13.20 | 13.20 |
| Large Flat Rate Boxes | 18.30 | 16.80 |

COMMERCIAL PLUS REGIONAL RATE BOXES

| Maximum cubic feet | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| A | $7.68 | $7.92 | $8.21 | $8.92 | $10.42 | $11.13 | $12.10 | $18.69 |
| B | 8.07 | 8.51 | 9.42 | 11.53 | 16.72 | 19.21 | 21.89 | 34.38 |

*Commercial Plus Dimensional Weight*

In Zones 1–9 (including local), parcels exceeding one cubic foot are priced at the actual weight or the dimensional weight, whichever is greater.

For box-shaped parcels, the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) of the parcel, and dividing by 166.

For irregular-shaped parcels (parcels not appearing box-shaped), the dimensional weight (pounds) is calculated by multiplying the length (inches) times the width (inches) times the height (inches) at the associated maximum cross-sections of the parcel, dividing by 166, and multiplying by an adjustment factor of 0.785.

COMMERCIAL PLUS CUBIC

| Maximum cubic feet | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| 0.10 | $7.02 | $7.35 | $7.56 | $7.80 | $7.98 | $8.15 | $8.42 | $11.40 |
| 0.20 | 7.46 | 7.80 | 8.02 | 8.71 | 9.00 | 9.22 | 9.56 | 13.15 |
| 0.30 | 8.04 | 8.26 | 8.55 | 9.65 | 10.98 | 11.58 | 12.29 | 19.12 |
| 0.40 | 8.21 | 8.57 | 8.93 | 10.31 | 12.78 | 14.02 | 16.02 | 24.28 |
| 0.50 | 8.34 | 8.84 | 9.42 | 11.15 | 14.98 | 16.89 | 19.24 | 29.88 |

*Open and Distribute (PMOD)*

a. DDU

| Container | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| Half Tray | $8.49 | $10.39 | $12.56 | $20.20 | $20.47 | $22.25 | $24.70 | $30.88 |
| Full Tray | 11.54 | 14.43 | 16.80 | 29.41 | 33.79 | 35.91 | 40.07 | 50.08 |
| EMM Tray | 13.23 | 15.76 | 19.47 | 32.53 | 35.71 | 39.21 | 43.60 | 54.50 |
| Flat Tub | 18.90 | 23.69 | 29.29 | 49.54 | 59.80 | 64.65 | 71.96 | 89.95 |

b. Processing Facilities

| Container | Local, Zones 1 & 2 ($) | Zone 3 ($) | Zone 4 ($) | Zone 5 ($) | Zone 6 ($) | Zone 7 ($) | Zone 8 ($) | Zone 9 ($) |
|---|---|---|---|---|---|---|---|---|
| Half Tray | $6.73 | $8.52 | $10.46 | $18.24 | $18.64 | $20.39 | $21.89 | $27.37 |
| Full Tray | 8.70 | 11.22 | 13.97 | 25.48 | 30.12 | 32.24 | 36.03 | 45.04 |
| EMM Tray | 10.38 | 12.03 | 16.39 | 28.13 | 31.95 | 35.18 | 40.65 | 50.82 |
| Flat Tub | 14.85 | 19.63 | 24.87 | 45.42 | 55.48 | 60.39 | 66.42 | 83.04 |

*Pickup On Demand Service*

Add $24.00 for each Pickup On Demand stop.

*IMpb Noncompliance Fee*

Add $0.20 for each IMpb-noncompliant parcel paying commercial prices, unless the eVS Unmanifested Fee was already assessed on that parcel.

*eVS Unmanifested Fee*

Add $0.20 for each unmanifested parcel paying commercial prices, unless the IMpb Noncompliance Fee was already assessed on that parcel.

[FR Doc. 2020–12618 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## POSTAL SERVICE

### Product Change—Priority Mail Negotiated Service Agreement

**AGENCY:** Postal Service™.

**ACTION:** Notice.

**SUMMARY:** The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

**DATES:** *Date of required notice:* June 11, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Robinson, 202–268–8405.

**SUPPLEMENTARY INFORMATION:** The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 2, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 626 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–151, CP2020–162.

**Sean Robinson,**

*Attorney, Corporate and Postal Business Law.*

[FR Doc. 2020–12603 Filed 6–10–20; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the U.S. Securities and Exchange Commission will host the 39th annual Government-Business Forum on Small Business Capital Formation virtually on Thursday, June 18, 2020 beginning at 12:00 p.m. Eastern Time.

**PLACE:** The Forum will be a completely virtual event conducted via livestreaming and video conferencing. Members of the public may register and participate via video conferencing or they may watch portions of the event via webcast on the Commission's website at *http://www.sec.gov.*

**STATUS:** The meeting will begin at 12:00 p.m. and will be open to the public via webcast. This Sunshine Act notice is being issued because a majority of the Commission may virtually attend the Forum.

**MATTERS TO BE CONSIDERED:** The Forum will highlight success stories and challenges faced by small businesses and their investors, from startups to small cap, across the country and solicit feedback from the public on opportunities to improve capital formation.

**CONTACT PERSON FOR MORE INFORMATION:** For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: June 9, 2020.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2020–12773 Filed 6–9–20; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–89026; File No. SR–NASDAQ–2019–091]**

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt a New Rule Concerning Nasdaq's Ability To Request Information From a Listed Company Regarding the Number of Unrestricted Publicly Held Shares in Certain Circumstances and Halt Trading in the Company's Security Upon the Request, and in Certain Circumstances Request a Plan To Increase the Number of Unrestricted Publicly Held Shares To an Amount That is Higher Than the Applicable Publicly Held Shares Requirement

June 5, 2020.

On November 22, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a rule specifying Nasdaq's ability to request information from a listed company regarding the number of unrestricted publicly held shares when Nasdaq observes unusual trading characteristics in a security or a company announces an event that may cause a contracting in the number of unrestricted publicly held shares, halt trading in such company's securities upon such a request, and potentially request a listed company to increase its number of unrestricted publicly held shares. The proposed rule change was published for comment in the **Federal Register** on December 12, 2019.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 87677 (December 6, 2019), 84 FR 67974 (December 12, 2019).

On January 24, 2020, pursuant to Section 19(b)(2) of the Act,[4] 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.[5] On March 4, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act[8] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The date of publication of notice of filing of the proposed rule change was December 12, 2019. June 9, 2020, is 180 days from that date, and August 8, 2020, is 240 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates August 8, 2020, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NASDAQ–2019–091).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–12590 Filed 6–10–20; 8:45 am]

**BILLING CODE 8011–01–P**

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 88028 (January 24, 2020), 85 FR 5500 (January 30, 2020). The Commission designated March 11, 2020, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 88315 (March 4, 2020), 85 FR 13954 (March 10, 2020).

[8] 15 U.S.C. 78s(b)(2).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(57).

## DEPARTMENT OF STATE

**[Public Notice: 11138]**

### Certification Pursuant to Section 7041(F)(2) of the Department Of State, Foreign Operations, and Related Programs Appropriations Act, 2020

Pursuant to section 7041(f)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2020 (Div. G, Pub. L. 116–94) (SFOAA) and Department of State Delegation of Authority 245–2, I hereby certify that all practicable steps have been taken to ensure that mechanisms are in place for monitoring, oversight, and control of funds made available by the SFOAA for assistance for Libya.

This certification shall be published in the **Federal Register** and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: May 26, 2020.

**Stephen E. Biegun,**

*Deputy Secretary of State.*

[FR Doc. 2020–12664 Filed 6–10–20; 8:45 am]

**BILLING CODE 4710–31–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in California

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans).

**SUMMARY:** The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, North County Corridor New State Route 108 Project and Route Adoption, which proposes a new freeway/expressway for portions of State Route 108, 219 and 120 in the County of Stanislaus, California. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before November 9, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For Caltrans: Jennifer Lugo, Branch Chief, Northern San Joaquin Valley Management Branch I, 855 M Street, Suite 200, Fresno, CA 93721, weekdays from 7:30 a.m. to 4:15 p.m., *jennifer.lugo@dot.ca.gov,* telephone (559) 445–6172. For FHWA, contact David Tedrick at (916) 498–5024 or email *david.tedrick@dot.gov.*

**SUPPLEMENTARY INFORMATION:** Effective July 1, 2007, the FHWA assigned, and the Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: North County Corridor New State Route 108 Project and Route Adoption in Stanislaus County, California. The project would construct an eighteen mile long roadway alignment from State Route 108 (McHenry Avenue) to State Route 120 approximately six miles east of the City of Oakdale. The project would serve as a bypass for the cities of Riverbank, Oakdale, and Modesto to reduce existing and future traffic congestion in Northern Stanislaus County, support the efficient movement of goods and services and improve interregional travel. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on March 3, 2020, in the FHWA Record of Decision (ROD) issued on May 22, 2020, and in other documents in the FHWA project records. The FEIS, ROD, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans FEIS and ROD can be viewed and downloaded from the project website at *http://www.stancounty.com/publicworks/projects.shtm,* or due to the current COVID 19 pandemic, please contact Juan Torres at *juan.torres@dot.ca.gov* for a printed version of this document. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA)
2. Fixing America's Surface Transportation Act (Fast Act)
3. Clean Air Act
4. Federal-Aid Highway Act

5. Clean Water Act
6. Historic Sites Act
7. Archeological Resources Protection Act
8. Archeological and Historic Preservation Act
9. Antiquities Act
10. Endangered Species Act
11. Migratory Bird Treaty Act
12. Fish and Wildlife Coordination Act
13. Section 4(f) of the Department of Transportation Act
14. Civil Rights Act, Title VI
15. Farmland Protection Policy Act
16. Rehabilitation Act
17. Americans with Disabilities Act
18. Safe Drinking Water Act
19. Occupational Safety and Health Act
20. Atomic Energy Act
21. Toxic Substances Control Act
22. Federal Insecticide, Fungicide and Rodenticide Act
23. E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management
24. E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
25. E.O. 12088, Federal Compliance with Pollution Control Standards

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(*l*)(1)

Issued on: June 5, 2020.

**Rodney Whitfield,**

*Director, Financial Services, Federal Highway Administration, California Division.*

[FR Doc. 2020–12668 Filed 6–10–20; 8:45 am]

**BILLING CODE 4910–RY–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2020–0079]**

### Request for Comments of a Previously Approved Information Collection

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on March 24, 2020.

**DATES:** Comments must be submitted on or before July 13, 2020.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Timothy Pickering, 202–366–0704, Acting Director, Office of Ports & Waterways Planning, U.S. Department of Transportation, 1200 New Jersey Ave., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

*Title:* America's Marine Highway Program.

*OMB Control Number:* 2133–0541.

*Type of Request:* Renewal of a Previously Approved Information Collection.

*Background:* The Department of Transportation will solicit applications for Marine Highway Projects as specified in the America's Marine Highway Program Final Rule, MARAD–2010–0035, published in the **Federal Register** on April 9, 2010. These applications must comply with the requirements of the referenced America's Marine Highway Program Final Rule, and be submitted in accordance with the instructions contained in that Final Rule. Open season for Marine Highway Project applications is open through January 31, 2022.

*Respondents:* State, Local, or Tribal Government and Business or other for profit.

*Affected Public:* Vessel Operators.

*Total Estimated Number of Responses:* 35.

*Frequency of Collection:* Annually.

*Estimated Time per Respondent:* 10.

*Total Estimated Number of Annual Burden Hours:* 350.

*Public Comments Invited:* Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; 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 respondents, including the use of automated collection techniques or other forms of information technology.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.93.

* * *

Dated: June 8, 2020.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2020–12656 Filed 6–10–20; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. DOT–OST–2020–0049]**

### Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection(s): Procedures for Transportation Workplace Drug and Alcohol Testing Programs (ICR 2105–0529)

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Transportation (DOT) invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew information collection 2105–0529, Procedures for Transportation Drug and Alcohol Testing Program (ICR 2105–0529). The information to be collected will be used to document tests conducted and actions taken to ensure safety in the workplace and/or are necessary under the Omnibus Transportation Employee Testing Act of 1991, which requires DOT to implement a drug and alcohol testing program in various transportation-related industries. DOT is required to publish this notice in the **Federal Register** in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments to this notice must be received by August 10, 2020.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Website: http://www.regulations.gov* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Federal eRulemaking Portal: http://www.regulations.gov* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Instructions:* You must include the agency name and docket number [DOT–OST–2020–0049] of this notice at the beginning of your comment. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act section of this document.

*Docket:* You may view the public docket through the internet at *http://www.regulations.gov* or in person at the Docket Management System office at the above address.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** Bohdan Baczara, Office of Drug and Alcohol Policy and Compliance, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; 202–366–3784 (voice), 202–366–3897 (fax), or *ODAPCWebmail@dot.gov* (email).

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2105–0529.

*Title:* Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

*Form Numbers:* DOT F 1385; DOT F 1380.

*Type of Review:* Clearance of a renewal of an information collection.

*Background:* Under the Omnibus Transportation Employee Testing Act of 1991, DOT is required to implement a drug and alcohol testing program in various transportation related industries. This specific requirement is elaborated in 49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. This request for a renewal of the information collection for the program includes 41 burden items related to the overall program and 2 official DOT forms: The U.S. Department of Transportation Alcohol Testing Form (ATF) [DOT F 1380] and the DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form [DOT F 1385].

The ATF includes the employee's name, the type of test taken, the date of the test, and the name of the employer. Data on each test conducted, including test results, is necessary to document that the tests were conducted and is used to take action, when required, to ensure safety in the workplace. The MIS form includes employer specific drug and alcohol testing information such as the reason for the test and the cumulative number of test results for the negative, positive, and refusal tests. No employee specific data is collected. The MIS data is used by each of the affected DOT Agencies (*i.e.,* Federal Aviation Administration, Federal Transit Administration, Federal Railroad Administration, Federal Motor Carrier Safety Administration, and the Pipeline and Hazardous Materials Safety Administration) and the United States Coast Guard when calculating their industry's annual random drug and/or alcohol testing rate.

*Respondents:* The information will be collected from transportation employers, Department representatives, and a variety of service agents. Estimated total number of respondents is 3,593,202.

*Frequency:* The information will be collected annually.

*Estimated Total Number Burden Hours:* 1,287,811.

| PRA item | Number of respondents | Number of responses | Burden per response | Total burden hours | Total salary costs ($) [1] |
|---|---|---|---|---|---|
| Exemptions from Regulation Provisions Requests [40.7(a)]. | 1 | 1 | 180 min (3 hours) | 3 | $104 |
| Employer Stand-down Waiver Requests [40.21(b)] | 0 | 0 | 480 min (8 hours) | 0 | 0 |
| Employee Testing Records from Previous Employers [40.25(a)]. | 584,628 | 3,538,179 | 8 min | 471,757 | 16,379,410 |
| Employee Release of Information [40.25(f)] | 3,538,179 | 3,538,179 | 4 min | 235,878 | 8,189,704 |
| MIS Form Submission [40.26] | 17,840 | 17,840 | 90 min (1.5 hours) | 26,760 | 929,107 |
| Collector (Qualification and Refresher) Training Documentation (40.33(b) & (e)]. | 5,000 | 5,000 | 4 min | 333 | 11,561 |
| Collector Error Correction Training Documentation [40.33(f)]. | 12,000 | 19,625 | 4 min | 1,308 | 45,425 |
| Laboratory Reports to DOT Regarding Unlisted Adulterant [40.91(e)]. | 0 | 0 | 30 min | 0 | 0 |
| Semi-Annual Laboratory Reports to Employers [40.111(a)]. | 23 | 385,854 | 4 min | 25,723 | 893,123 |
| Semi-Annual Laboratory Reports to DOT [40.111(d)] | 23 | 46 | 4 min | 3 | 106 |
| Medical Review Officer (MRO) (Qualifications and Continuing Education) Training Documentation [40.121(c) & (d)]. | 1,000 | 1,000 | 4 min | 66 | 2,291 |
| MRO Review of Negative Results Documentation [40.127(b)(2)(ii)]. | 5,000 | 381,055 | 4 min | 25,403 | 873,000 |
| MRO Failure to Contact Donor Documentation [40.131(c)(1)]. | 5,000 | 63,827 | 4 min | 4,255 | 147,738 |
| MRO Effort to Contact DER Documentation [40.131(c)(2)(iii)]. | 5,000 | 63,827 | 4 min | 4,255 | 147,738 |
| DER Successful Contact Employee Documentation [40.131(d)]. | 51,061 | 51,061 | 4 min | 3,404 | 118,190 |
| DER Failure to Contact Employee Documentation [40.131(d)(2)(i)]. | 12,765 | 12,765 | 4 min | 851 | 29,547 |
| MRO Verification of Positive Result Without Interview Documentation [40.133]. | 5,000 | 12,765 | 4 min | 851 | 29,547 |
| Adulterant/Substitution Evaluation Physician Statements [40.145(g)(2)(ii)(d)]. | 0 | 0 | 30 min | 0 | 0 |
| MRO Cancellation of Adulterant/Substitution for Legitimate Reason Reports [40.145(g)(5)]. | 0 | 0 | 30 min | 0 | 0 |

| PRA item | Number of respondents | Number of responses | Burden per response | Total burden hours | Total salary costs ($) [1] |
|---|---|---|---|---|---|
| Employee Admission of Adulterating/Substituting Specimen MRO Determination [40.159(c)]. | 40 | 40 | 4 min | 3 | 104 |
| Split Specimen Requests by MRO [40.171(c)] | 5,000 | 7,206 | 4 min | 480 | 16,680 |
| Split Failure to Reconfirm for Drugs Reports by MRO [40.187(b)]. | 35 | 34 | 4 min | 2 | 69 |
| Split Failure to Reconfirm for Adulterant/Substitution Reports by MRO [40.187(c)]. | 5 | 5 | 5 min | 1 | 34 |
| Shy Bladder Physician Statements [40.193(f)] | 773 | 773 | 5 min | 64 | 2,238 |
| MRO Statements Regarding Physical Evidence of Drug Use [40.195(b) & (c)]. | 0 | 0 | 0 | 0 | 0 |
| Drug Test Correction Statements [40.205(b)(1) & (2)] | 25,000 | 154,732 | 8 min | 20,630 | 716,308 |
| Breath Alcohol Technician (BAT)/Screening Test Technician (STT) (Qualification and Refresher) Training Documentation [40.213(b)(c) & (e)]. | 2,000 | 2,000 | 4 min | 133 | 4,617 |
| BAT/STT Error Correction Training Documentation [40.213(f)]. | 168 | 168 | 4 min | 11 | 390 |
| Complete DOT Alcohol Testing Forms [40.225(a)] | 10,000 | 3,378,454 | 8 min | 450,460 | 15,639,989 |
| Evidential Breath Testing Device Quality Assurance/Calibration Records [40.233(c)(4)]. | 10,000 | 10,000 | 4 min | 666 | 23,123 |
| Shy Lung Physician Statements [40.265(c)(2)] | 168 | 168 | 4 min | 11 | 390 |
| Alcohol Test Correction Statements [40.271(b)(1) & (2)] | 337 | 337 | 4 min | 22 | 781 |
| Substance Abuse Professional (SAP) (Qualification and Continuing Education) Training Documentation [40.281(c) & (d)]. | 3,334 | 3,334 | 4 min | 222 | 7,707 |
| Employer SAP Lists to Employees [40.287] | 10,000 | 115,713 | 4 min | 7,714 | 267,837 |
| SAP Reports to Employers [40.311(c)(d) & (e)] | 10,000 | 94,456 | 4 min | 6,297 | 218,634 |
| Correction Notices to Service Agents [40.373(a)] | 25 | 25 | 60 min | 25 | 868 |
| Notice of Proposed Exclusion (NOPE) to Service Agents [40.375(a)]. | 5 | 5 | 600 min (10 hours) | 50 | 1,736 |
| Service Agent Requests to Contest Public Interest Exclusions (PIE) [40.379(b)]. | 2 | 2 | 60 min | 2 | 69 |
| Service Agent Information to Argue PIE [40.379(b)(2)] | 2 | 2 | 120 min | 8 | 277 |
| Service Agent Information to Contest PIE [40.381(a) & (b)]. | 2 | 2 | 240 min (4 hours) | 8 | 277 |
| Notices of PIE to Service Agents [40.399] | 1 | 1 | 60 min | 1 | 34 |
| Notices of PIE to Employer and Public [40.401(b) & (d)] | 1 | 1 | 60 min | 1 | 34 |
| Service Agent PIE Notices to Employers [40.403(a)] | 1 | 300 | 30 min | 150 | 5,208 |
| Total New | 3,593,202 | 11,841,478 | 2,196 min. (36.6 hours) | 1,287,811 | 44,703,995 |

[1] All salary costs are based upon the Department of Labor's bureau of Labor Statistics average employee compensation hourly cost I 2019.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for DOT's performance; (b) The accuracy of the estimated burden that the collection would impose on respondents; (c) Ways for the DOT to enhance the quality, utility and clarity of the information to be collected; and (d) Ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on June 5, 2020.

**Bohdan Baczara,**

*Deputy Director, DOT, Office of Drug and Alcohol Policy and Compliance.*

[FR Doc. 2020–12612 Filed 6–10–20; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for effective date(s).

**FOR FURTHER INFORMATION CONTACT:** OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

#### Notice of OFAC Actions

On March 26, 2019, OFAC determined that the property and

interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

**BILLING CODE 4010–AL–P**

*Individuals*

1. AL BEHADILI, Mohammed Saeed Odhafa (Arabic: محمد سعيد عذافه البهادلي) (a.k.a. ADHAFAH, Muhammad Said; a.k.a. AL-BAHADILI, Muhammad Sa'id 'Adhafah; a.k.a. ALBEHADILI, Mohammed Saeed Othafa; a.k.a. "SAEED, Mohammed"), Iraq; DOB 04 Mar 1970; nationality Iraq; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport A3347475 (Iraq) (individual) [SDGT] [IFSR] (Linked To: AL KHAMAEL MARITIME SERVICES).

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," 3 CFR, 2001 Comp., p. 786, as amended by Executive Order 13886 of September 9, 2019, "Modernizing Sanctions To Combat Terrorism," 84 FR 48041 (E.O. 13224, as amended) for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, AL KHAMAEL MARITIME SERVICES, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

2. AL-GHORAYFI, Muhammad (a.k.a. ADNANI, Seyed Mohammad; a.k.a. ALADNANI, Mohammad Jasim Mohammadsadeq; a.k.a. AL-ADNANI, Muhammad), Iraq; DOB 27 Jun 1987; alt. DOB 17 Sep 1987; nationality Iran; alt. nationality Iraq; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport A9792142 (Iraq); alt. Passport E96048299 (Iran); National ID No. 1742742726 (Iran) (individual) [SDGT] [IFSR] (Linked To: FADAKAR, Alireza).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, ALIREZA FADAKAR, a person whose property and interests in property are blocked pursuant to E.O. 13224.

3. AL-HAMIDAWI, Shaykh 'Adnan (a.k.a. AL HAMEEDAWI, Adnan Younus Jasim; a.k.a. "ABU-'AMMAR"), Iraq; DOB 20 Nov 1976; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male (individual) [SDGT] (Linked To: KATA'IB HIZBALLAH).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, KATA'IB HIZBALLAH, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

4. AL-MANSOORI, Ali Hussein Falih (a.k.a. AL-MANSURI, 'Ali Husayn Falih; a.k.a. "ABU-REZVAN"; a.k.a. "REZVAN, Seyyed"; a.k.a. "REZWAN, Seyyed"), Iraq; DOB 15 Sep 1971; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male (individual) [SDGT] [IFSR] (Linked To: AL KHAMAEL MARITIME SERVICES).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, AL KHAMAEL MARITIME SERVICES, an entity whose property

and interests in property are blocked pursuant to E.O. 13224.

5. ASADI, Ali Farhan, Iran; Iraq; DOB 24 Feb 1962; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport L35172959 (Iran); alt. Passport P41219083 (Iran) (individual) [SDGT] [IFSR] (Linked To: AL KHAMAEL MARITIME SERVICES).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, AL KHAMAEL MARITIME SERVICES, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

6. BAKHTIARI, Mashallah (a.k.a. BAKHTIARI, Mashaallah), Iran; Iraq; DOB 01 Sep 1964; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport T47383807 (Iran); National ID No. 0053317963 (Iran) (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

   Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

7. FADAKAR, Alireza (a.k.a. FEDAKAR, Ali Reza), Iran; Iraq; DOB 09 Mar 1966; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport H46055007 (Iran); alt. Passport N35636890 (Iran); alt. Passport U41671790 (Iran) (individual) [SDGT] [IRGC] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

8. GHASEMZADEH, Mehdi (a.k.a. AZIZPUR, Amir), Iran; DOB 21 Sep 1981; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male (individual) [SDGT] [IRGC] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

9. GHOLIZADEH, Vali (Arabic: ولی قلی زاده) (a.k.a. QOLIZADEH, Vali; a.k.a. SA'IDI, Mohammad Hosein), Iran; Iraq; DOB 11 Sep 1970; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 0056758472 (Iran) (individual) [SDGT] [IFSR] (Linked To: MADA'IN NOVIN TRADERS).

   Designated pursuant to section 1(a)(iii)(E) of E.O. 13224, as amended, for being a leader or official of MADA'IN NOVIN TRADERS, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

10. JALAL MAAB, Mohammad (Arabic: محمد جلال مآب) (a.k.a. JALALMAAB, Mohammad), Iran; Iraq; DOB 15 Oct 1963; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport J32373111 (Iran); alt. Passport W40896197 (Iran); alt. Passport T47386425 (Iran); alt. Passport G10513532 (Iran); alt. Passport D10005655 (Iran); National ID No. 2991399554 (Iran) (individual) [SDGT] [IFSR] (Linked To: RECONSTRUCTION ORGANIZATION OF HOLY SHRINES IN IRAQ).

    Designated pursuant to section 1(a)(iii)(E) of E.O. 13224, as amended, for being a leader or official of RECONSTRUCTION ORGANIZATION OF HOLY SHRINES IN IRAQ, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

11. MUSAVIFAR, Sayyed Reza (Arabic: سید رضا موسوی فر) (a.k.a. MOUSAVIFAR, Seyed Reza) Iran; Iraq; DOB 23 Jul 1958; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 0032906390 (Iran) (individual) [SDGT] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

    Designated pursuant to section 1(a)(iii)(C) of E.O 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

12. MUSAVIR, Sayyed Yaser (a.k.a. AMINPUR, Sayyed Sai'd; a.k.a. MOUSAVI, Seyed Ahmad Shid; a.k.a. MUSAVI, Sayyed Sa'id), Iran; Iraq; DOB 23 Aug 1957; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male (individual) [SDGT] [IRGC] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

    Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

13. PELARAK, Hassan (Arabic: حسن پلارک) (a.k.a. POLARAK, Hassan; a.k.a. "JA'FARI, Hasan"), Iran; Iraq; DOB 03 Sep 1961; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport D10001869 (Iran); alt. Passport V43936121 (Iran); National ID No. 3051910163 (Iran) (individual) [SDGT] [IRGC] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

    Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

14. SABURINEZHAD, Hasan (Arabic: حسن سبری نژاد) (a.k.a. NAZHAD, Hasan Saburi; a.k.a. SABURINEJAD, Ali; a.k.a. SABURINEZHAD, Ali; a.k.a. "Engineer Morteza"; a.k.a. "MURTADA, Muhandis"; a.k.a. "SABURI, Hasan"), Iran; Iraq; Syria; DOB 09 Jan 1965; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 0383595282 (Iran) (individual) [SDGT] [IRGC] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

    Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

15. SHOUSHTARIPOUSTI, Masoud (Arabic: مسعود شوشتری پوستی) (a.k.a. SHUSHTARI, Masoud; a.k.a. SHUSHTARI, Mas'ud), Iran; Iraq; DOB 08 Dec 1956; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Passport J32382248 (Iran); alt. Passport H46090737 (Iran); National ID No. 1754030661 (Iran) (individual) [SDGT] [IRGC] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

    Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

*Entities*

1. AL KHAMAEL MARITIME SERVICES (Arabic: شركة الخمائل الخدامات البحرية و النقل) (a.k.a. AL KHAMAIL MARINE SERVICE; a.k.a. ALKHAMAEL CO. MARITIME SERVICES; a.k.a. ALKHAMAEL TERMINAL AND PORT OPERATION MANAGEMENT; a.k.a. SHARIKAH AL-KHAMA'IL LILKHADAMAT AL-BAHRIYYAH WALNQL), Umm Qasr, Iraq; Basrah, Iraq; Najaf, Iraq; Additional Sanctions Information - Subject to Secondary Sanctions [SDGT] [IRGC] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

2. BAHJAT AL KAWTHAR COMPANY FOR CONSTRUCTION AND TRADING LTD. (a.k.a. AL-KAWTHAR FOUNDATION; a.k.a. KOSAR COMPANY), Khabateh, Toosi St., Najaf, Iraq; Additional Sanctions Information - Subject to Secondary Sanctions [SDGT] [IRGC] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

3. MADA'IN NOVIN TRADERS (Arabic: شركت سهامى خاص متاجر نوين مدائن) (a.k.a. MATAJER NOVIN MADA'EN COMPANY), Lashgarak Road, Artesh Highway, Shahid Hossein Arab Halavasi Street, No. 11, Ground Floor, Tehran 1955633311, Iran; Iraq; Additional Sanctions Information - Subject to Secondary Sanctions; Registration Number 515671 (Iran) [SDGT] [IFSR] (Linked To: SABURINEZHAD, Hasan).

   Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, HASAN SABURINEZHAD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. MIDDLE EAST SAMAN CHEMICAL COMPANY (Arabic: شركت سامان شيمى خاور ميانه) (a.k.a. MIDDLE EAST SAMAN CHEMICAL TRADE COMPANY; a.k.a. MIDDLE EAST SAMAN CHEMICAL TRADING; a.k.a. MIDDLE EAST SAMAN SHIMI TRADING COMPANY; a.k.a. SAMAN CHEMICAL COMPANY; a.k.a. SAMAN MIDDLE EASTERN CHEMICAL COMPANY; a.k.a. SAMAN SHIMI KHAVARMIANEH LTD.; a.k.a. SAMAN SHIMI MIDDLE EAST; a.k.a. "MSC"), Aghadasieh-Shahid Movahed Danesh st.-Nilufar St.-Placard, 2-4th Floor, Unit 401, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; National ID No. 10340455609 (Iran) [SDGT] [IFSR] (Linked To: MUSAVIFAR, Sayyed Reza).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, SAYYED REZA MUSAVIFAR, a person whose property and interests in property are blocked pursuant to E.O. 13224.

5. RECONSTRUCTION ORGANIZATION OF HOLY SHRINES IN IRAQ (Arabic: عاليات ستاد باسازى عتبات) (a.k.a. HEADQUARTERS OF RECONSTRUCTION OF HOLY SHRINES; a.k.a. RECONSTRUCTION ORGANIZATION OF THE HOLY SHRINES), No. 3, Shahid Mohammadi Alley, Shahid Sepahbod Gharani Street, Fardowsi Square, Tehran 15999-77111, Iran; Najaf, Iraq; Karbala, Iraq; Baghdad, Iraq; Samarra, Iraq; Additional Sanctions Information - Subject to Secondary Sanctions [SDGT] [IRGC] [IFSR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or for having acted or purported to act for or on behalf of, directly or indirectly, Iran's ISLAMIC REVOLUTIONARY GUARD CORPS (IRGC)-QODS FORCE, an entity whose property and interests in property are blocked pursuant to E.O. 13224.

Dated: May 1, 2020.

**Bradley T. Smith,**

*Deputy Director, Office of Foreign Assets Control.*

[FR Doc. 2020–12645 Filed 6–10–20; 8:45 am]

**BILLING CODE 4810–AL–C**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for date(s) sanctions become effective.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or Assistant Director for Licensing, tel.: 202–622–2480.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treas.gov/ofac*).

**Notice of OFAC Actions**

On July 31, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authorities listed below.

**Individual**

1. ZARIF, Mohammad Javad (a.k.a. ZARIF KHONSARI, Mohammad Javad; a.k.a. ZARIF, Javad), Iran; DOB 08 Jan 1960; Additional Sanctions Information—Subject to Secondary Sanctions; Gender Male (individual) [IRAN–EO13876].

Designated pursuant to section 1(a)(ii)(D) of E.O. 13876 for having acted or purported to act for or on behalf of, directly or indirectly, the SUPREME LEADER OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13876.

Dated: May 1, 2020.

**Bradley T. Smith,**

*Deputy Director, Office of Foreign Assets Control.*

[FR Doc. 2020–12644 Filed 6–10–20; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Action

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for date sanctions became effective.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions

programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

**Notice of OFAC Action(s)**

On March 26, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority(ies) listed below. Dealings in property subject to U.S. jurisdiction in which a person identified as blocked pursuant to the relevant sanctions authority(ies) has an interest are prohibited effective as of the date of that status, which may be earlier than the date of OFAC's determination.

**Individual**

KHAMENEI, Ali Husseini, Iran; DOB 19 Apr 1939; POB Mashhad, Iran; Additional Sanctions Information—Subject to Secondary Sanctions; Supreme Leader of Iran (individual) [IRAN–EO13876].

Identified pursuant to section 1(a)(i) of E.O. 13876, 84 FR 30576, June 24, 2019, as the SUPREME LEADER OF THE ISLAMIC REPUBLIC OF IRAN.

Dated: May 1, 2020.

**Bradley T. Smith,**

*Deputy Director, Office of Foreign Assets Control.*

[FR Doc. 2020–12646 Filed 6–10–20; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Internal Revenue Service Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

**DATES:** Comments should be received on or before July 13, 2020 to be assured of consideration.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

**Internal Revenue Service (IRS)**

*Title:* Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

*OMB Control Number:* 1545–NEW.

*Type of Review:* New Collection.

*Description:* In March 2018, the Administration of President Trump launched the President's Management Agenda (PMA) and established new Cross-Agency Priority (CAP) Goals. These Presidential actions and requirements establish an ongoing process of collecting customer insights and using them to improve services. This new request will enable the Internal Revenue Service to act in accordance with OMB Circular A–11 Section 280 to ultimately transform the experience of its customers to improve both efficiency and mission delivery and increase accountability by communicating about these efforts with the public. The Agency will collect, analyze, and interpret information gathered through this generic clearance to identify services' accessibility, navigation, and use by customers, and make improvements in service delivery based on customer insights gathered through developing an understanding of the user experience interacting with Government.

*Affected Public:* Individuals or households; business or other for-profit organizations; not-for-profit institutions; State, local, tribal or Federal government; and Universities.

*Estimated Number of Respondents:* 679,485.

*Frequency of Response:* On occasion.

*Estimated Total Number of Annual Responses:* 679,485.

*Estimated Time per Response:* 8 minutes to 2 hours.

*Estimated Total Annual Burden Hours:* 104,155.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 8, 2020.

**Spencer W. Clark,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2020–12655 Filed 6–10–20; 8:45 am]

**BILLING CODE 4830–01–P**


# FEDERAL REGISTER

Vol. 85 Thursday,
No. 113 June 11, 2020

Part II

## Department of Energy

10 CFR Parts 429 and 430
Energy Conservation Program: Test Procedure for Room Air Conditioners; Proposed Rule

## DEPARTMENT OF ENERGY

### 10 CFR Parts 429 and 430

**[EERE–2017–BT–TP–0012]**

**RIN 1904–AD47**

## Energy Conservation Program: Test Procedure for Room Air Conditioners

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Department of Energy (DOE) proposes to amend the test procedure for room air conditioners (''room ACs'') to address updates to the industry standards that are incorporated by reference, provide for the testing of variable-speed room ACs to better reflect their relative efficiency gains at lower outdoor temperatures as compared to single-speed room ACs, and to provide specifications and minor corrections that would improve repeatability, reproducibility, and overall readability of the test procedure. Because there are no testing modifications proposed for single-speed room ACs, DOE expects that the proposed changes will not affect the measured energy use for these models. For variable-speed room ACs, the proposed changes will improve the representativeness of the measured energy use of these models. As part of this proposal, DOE is announcing a public meeting to collect comments and data on its proposal.

**DATES:**

*Meeting:* DOE will hold a webinar on Wednesday, July 8, 2020, from 10:00 a.m. to 3:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants. If no participants register for the webinar, then it will be cancelled. DOE will hold a public meeting on this proposed test procedure if one is requested by June 25, 2020.

*Comments:* DOE will accept comments, data, and information regarding this proposal no later than August 10, 2020. See section V, ''Public Participation,'' for details.

**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–TP–0012, by any of the following methods:

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

(2) *Email: RoomAC2017TP0012@ee.doe.gov.* Include the docket number EERE–2017–BT–TP–0012 or regulatory information number (RIN) 1904–AD47 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 the rulemaking process, see section V of this document.

*Docket:* The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), 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-TP-0012.* The docket web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section V of this document for information on how to submit comments through *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Bryan Berringer, 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) 586–0371. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–1777. Email: *Sarah.Butler@hq.doe.gov.*

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

**SUPPLEMENTARY INFORMATION:** DOE proposes to incorporate by reference the following industry standards into 10 CFR part 430:

(1) American National Standards Institute (ANSI)/Association of Home Appliance Manufacturers (AHAM) RAC–1–2015, (ANSI/AHAM RAC–1–2015), ''Room Air Conditioners;'' ANSI approved May 13, 2015.

(2) ANSI/American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 16–2016, (ANSI/ASHRAE Standard 16–2016), ''Method of Testing for Rating Room Air Conditioners, Packaged Terminal Air Conditioners, and Packaged Terminal Heat Pumps for Cooling and Heating Capacity;'' ANSI approved October 31, 2016.

(3) ANSI/ASHRAE Standard 41.1–2013, (ANSI/ASHRAE Standard 41.1), ''Standard Method for Temperature Measurement;'' ANSI approved January 30, 2013.

(4) ANSI/ASHRAE Standard 41.2–1987 (RA 1992), (ANSI/ASHRAE Standard 41.2–1987 (RA 1992)), ''Standard Methods for Laboratory Airflow Measurement;'' ANSI reaffirmed April 20, 1992.

(5) ANSI/ASHRAE Standard 41.3–2014 (''ANSI/ASHRAE Standard 41.3–2014''), ''Standard Methods for Pressure Measurement;'' ANSI approved July 3, 2014.

(6) ANSI/ASHRAE Standard 41.6–2014, (ANSI/ASHRAE Standard 41.6–2014), ''Standard Method for Humidity Measurement;'' ANSI approved July 3, 2014.

(7) ANSI/ASHRAE Standard 41.11–2014, (ANSI/ASHRAE Standard 41.11–2014), ''Standard Methods for Power Measurement;'' ANSI approved July 3, 2014.

(8) International Electrotechnical Commission (IEC) Standard 62301, (IEC Standard 62301 Second Edition), ''Household electrical appliances—Measurement of standby power, (Edition 2.0);''.

Copies of ANSI/AHAM RAC–1–2015 can be obtained from the Association of Home Appliance Manufacturers at *https://www.aham.org/ht/d/Store/.* Copies of ANSI/ASHRAE Standard 16–

2016, ANSI/ASHRAE Standard 41.1–2013, ANSI/ASHRAE Standard 41.2–1987, ANSI/ASHRAE Standard 41.3–2014, ANSI/ASHRAE Standard 41.6–2014, and ANSI/ASHRAE Standard 41.11–2014 can be obtained from the American National Standards Institute at *https://webstore.ansi.org/*. Copies of IEC Standard 62301 can be obtained from *http://webstore.iec.ch.*

See section IV.N for additional information on these standards.

**Table of Contents**



## I. Authority and Background

Room ACs 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)(2)) DOE's energy conservation standards and test procedure for room ACs are currently prescribed at 10 CFR 430.32(b) and 10 CFR 430.23(f), respectively. The following sections discuss DOE's authority to establish test procedures for room ACs and relevant background information regarding DOE's consideration of test procedures for this product.

### *A. Authority*

The Energy Policy and Conservation Act, as amended, (EPCA or the Act),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include room ACs, the subject of this document. (42 U.S.C. 6292(a)(2))

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 the Act specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), energy conservation standards (42 U.S.C. 6295), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of those products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

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

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) Standby mode and off mode energy consumption must be incorporated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedures already account for and incorporate standby and off mode energy consumption or such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (U.S.C. 6295(gg)(2)(A)(ii)) Any such amendment must consider the most current versions of the IEC Standard 62301 [3] and IEC Standard

[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.

[3] IEC 62301, ''Household electrical appliances—Measurement of standby power'' (Edition 2.0, 2011–01).

62087 [4] as applicable. (42 U.S.C. 6295(gg)(2)(A))

If DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered product, including room ACs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A) and (3)) If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. DOE is publishing this notice of proposed rulemaking (NOPR) pursuant to the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

*B. Background*

DOE's existing test procedure for room ACs appears at Title 10 of the CFR part 430, subpart B, appendix F (''Uniform Test Method for Measuring the Energy Consumption of Room Air Conditioners'' (''appendix F'')), and the room AC performance metric calculations are codified at 10 CFR 430.23(f). The test procedure for room ACs was established on June 1, 1977 (hereafter the ''June 1977 final rule'') and was subsequently redesignated and editorially amended on June 29, 1979. 42 FR 27896 (June 1, 1977); 44 FR 37938 (June 29, 1979).

1. The January 2011 Final Rule

The Energy Independence and Security Act of 2007 (Public Law 110–140; EISA 2007) directed DOE to amend its energy efficiency test procedures for all covered products to include measures of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) In compliance with these requirements, on January 6, 2011, DOE published a final rule (hereafter the ''January 2011 Final Rule''), amending the room AC test procedure to include measurements of standby mode and off mode power and to introduce a new combined efficiency metric, Combined Energy Efficiency Ratio (CEER), that accounts for energy consumption in active mode, standby mode and off mode. 76 FR 971. DOE also incorporated into its regulations a new industry test method, International Electrotechnical Commission (IEC) Standard 62301, ''Household electrical appliances—Measurement of standby power (first edition June 2005)'' (''IEC Standard 62301 First Edition''), to measure the standby and off mode energy consumption. In addition to IEC Standard 62301 First Edition, the January 2011 Final Rule updated references to test methods developed by the American National Standards Institute (ANSI), the Association of Home Appliance Manufacturers (AHAM) and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE). The current room AC test procedure incorporates by reference three industry test methods: (1) ANSI/AHAM RAC–1–2008, ''Room Air Conditioners'' (ANSI/AHAM RAC–1–2008),[5] (2) ANSI/ASHRAE Standard 16–1983 (RA 2009), ''Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners'' (ANSI/ASHRAE Standard 16–2009),[6] and (3) IEC Standard 62301 First Edition.[7]

2. The June 2015 Request for Information

On June 18, 2015, DOE published a request for information (RFI) (hereafter the ''June 2015 RFI'') regarding the energy conservation standards and test procedure for room ACs. 80 FR 34843. In addition to soliciting information regarding the energy conservations standards, the June 2015 RFI discussed and sought comment on the following aspects of the room AC test procedure: (1) Potential updates to the energy efficiency metric that would address performance in additional operating modes; (2) alternate methods for measuring cooling mode performance; (3) measuring heating mode performance and any relevant test methods, temperature conditions, or test burden; (4) methods for measuring performance at reduced cooling loads and the prevalence of units on the market with components optimized for efficient operation at reduced cooling loads; (5) testing and certification of units that can operate on multiple voltages; and (6) the energy usage associated with connected functionality. 80 FR at 34846–34848 (June 18, 2015). In response to the June 2015 RFI, DOE received comments from interested parties pertaining to the room AC test procedure, which are summarized throughout this NOPR.[8]

3. The August 2017 RFI

On August 4, 2017, DOE published another RFI (hereafter the ''August 2017 RFI'') regarding the test procedure for room ACs. 82 FR 36349. Following publication of the June 2015 RFI, DOE identified additional topics and questions for which it sought feedback, specifically regarding amendments to the room AC test procedure to harmonize with the recently established portable air conditioner (''portable AC'') test procedure, to clarify test setup and temperature conditions, to reference updated industry test procedures for room ACs, and on any additional topics that might inform DOE's decisions in a future test procedure rulemaking. DOE also welcomed further comments on the topics raised in the June 2015 RFI and on other issues relevant to the conduct of such a rulemaking that were not specifically identified in that document.

AHAM opposed harmonizing the room AC test procedure with the portable AC test procedure, claiming that harmonization would not assist consumers in making purchasing decisions, mainly because the two products have different consumers and are used for significantly different applications, based on recent consumer survey data. (AHAM, No. 3 at pp. 1–4) [9]

[4] IEC 62087, ''Methods of measurement for the power consumption of audio, video, and related equipment'' (Edition 3.0, 2011–04).

[5] Copies can be purchased from *http://webstore.ansi.org.*

[6] Copies can be purchased from *http://www.techstreet.com.*

[7] Copies can be purchased from *http://webstore.iec.ch.*

[8] All public comments are located in the room AC energy conservation standards rulemaking docket: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0059.*

[9] A notation in the form ''AHAM, No. 3 at pp. 1–4'' identifies a written comment: (1) Made by the Association of Home Appliance Manufacturers; (2) recorded in document number 3 that is filed in the docket of the current room AC test procedure

According to AHAM, the survey suggested that room ACs are purchased for homes without central air conditioning (''central AC''), where cost is a key factor, and where portability is not. AHAM also stated that room ACs are typically used for primary cooling, whereas portable ACs are used for supplemental cooling (*i.e.,* in addition to a central AC). AHAM claimed that the significant design difference between room ACs and portable ACs (specifically, that room ACs are installed in the barrier between the conditioned and unconditioned space, whereas portable ACs are installed entirely within the conditioned space) leads to drastically different design decisions on the size, weight, and shape of the product, impacting available design options for improving efficiency as well as the physical limitations on testing the products. Therefore, according to AHAM, harmonizing the test procedures for room ACs and portable ACs would result in consumer confusion and increased burden for manufacturers. *Id.* DOE notes that the proposals in this document regarding test procedure updates for room ACs were not considered on the basis of similarities or differences between room ACs and portable ACs. However, in development of the portable AC test procedure, DOE relied on data for room ACs in instances in which data specific to portable ACs were lacking. In the current rulemaking, DOE considered such data for room ACs during development of the proposed amendments to the room AC test procedure.

The Appliance Standards Awareness Project, Alliance to Save Energy, American Council for an Energy-Efficient Economy, Consumer Federation of America, Natural Resources Defense Council, Northeast Energy Efficiency Partnerships, Northwest Energy Efficiency Alliance, and Northwest Power and Conservation Council (hereafter the ''Joint Advocates'') and the Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric, and Southern California Edison (hereafter the ''California IOUs'') both noted that harmonizing the room AC and portable AC test procedures would allow for a comparison between the two products, which they agreed provide a similar function and consumer utility. (Joint Advocates, No. 6 at p. 1; California IOUs, No. 5 at p. 2) Nonetheless, neither supported aligning the room AC test procedure with the current portable AC test procedure.

The California IOUs expressed concern that the benefit of harmonization might not outweigh the negative impacts of an additional cooling mode test condition for room ACs; namely, that adding a second test condition would obscure the determination of peak load energy consumption and would be detrimental for the effective determination of room AC energy demand impact during peak usage times, which is of significant importance to the California IOUs. (California IOUs, No. 5 at p. 2) The Joint Advocates noted that the portable AC test procedure does not capture part-load performance and thus would not capture the benefits of technologies that improve part-load performance, such as variable-speed compressors. In light of this, rather than aligning the room AC test procedure with the portable AC test procedure, the Joint Advocates urged DOE to incorporate part-load performance into the room AC test procedure and the portable AC test procedure. (Joint Advocates, No. 6 at pp. 1–3) As discussed in sections III.E through III.K of this document, DOE is not proposing any significant changes to the room AC test procedure at this time for single-speed room ACs, which represent the majority of room AC configurations on the market today. Specifically, as discussed in section III.E.1.e of this document, DOE considered multiple test conditions as well as constant-cooling-load-based [10] or dynamic-cooling-load-based tests [11] as an alternative to the existing constant-temperature single outdoor condition room AC test procedure and has initially determined that such amendments would not be warranted for single-speed room ACs. However, DOE proposes in this document to adopt specific testing requirements for room ACs that use variable-speed compressors (''variable-speed room ACs'') to better represent their relative efficiency compared to single-speed room ACs, as described further in section III.C of this document.

4. The LG and Midea Waivers

On June 29, 2018, DOE announced receipt of a petition for waiver and application of an interim waiver from LG Electronic USA, Inc. (''LG''), in which LG sought an exemption from the DOE test procedure for room ACs, which appears in appendix F for certain room AC models with variable-speed capabilities (hereafter the ''LG Petition for Waiver'').[12] 83 FR 30717 (June 29, 2018). According to LG, the current DOE test procedure for room ACs, which provides for testing at full-load performance only, does not take into account the benefits of variable-speed room ACs at part-load conditions, and misrepresents their actual energy consumption. LG suggested an alternate test procedure for its variable-speed room ACs, which provided for testing each unit at four different outdoor temperatures instead of a single outdoor temperature, with the unit compressor speed fixed at each temperature. LG's approach for the alternate test procedure was derived from the current DOE test procedure for central ACs (10 CFR part 430, subpart B, appendix M (''appendix M'')). As discussed in a notice of petition for waiver and notice of grant of interim waiver (hereafter the ''Grant of LG Interim Waiver''), DOE initially agreed with LG's claim that the DOE test procedure evaluates the variable-speed models listed in the LG Petition for Waiver in a manner that is unrepresentative of their energy use. 83 FR 30717, 30719. DOE also reviewed the alternate procedure proposed by LG and based on that review determined that LG's suggested procedure would allow for the accurate measurement of the energy use for the listed variable-speed room ACs. Therefore, DOE granted an interim waiver to LG to use LG's suggested alternate test procedure for LG's listed variable-speed room AC models, with an additional specification of how to determine the intermediate compressor speed. On May, 8, 2019, DOE published a Decision and Order (hereafter the ''LG Waiver''), granting a waiver for four variable-speed basic models with the condition that LG must test and rate these models according to an alternate test procedure that was substantively consistent with that suggested by LG, and report product-specific information that reflects the alternate test procedure. 84 FR 2011.

rulemaking (Docket No. EERE–2017–BT–TP–0012) and available for review at *https://www.regulations.gov;* and (3) which appears on pages 1 through 4 of document number 3.

[10] Constant-cooling-load-based tests fix the amount of heat to the indoor test room by the reconditioning equipment, generally less than the test unit's nominal cooling capacity, while the indoor test room temperature is permitted to change and is controlled by the test unit according to its thermostat setting, which is fixed throughout testing.

[11] Dynamic-cooling-load-based tests vary the amount of heat added to the indoor test room by the chamber reconditioning equipment, while the indoor test room temperature is permitted to change and is controlled by the test unit and fixed thermostat setting, thereby measuring how a unit reacts to changing load conditions.

[12] All published documents directly related to the waiver are available in docket EERE–2018–BT–WAV–0006. (*https://www.regulations.gov/document?D=EERE-2018-BT-WAV-0006.*)

The alternate test procedure required under the LG Waiver differs from that required in the Grant of LG Interim Waiver as follows: (1) Removing the allowance to use a psychrometric chamber (which would be consistent with an air-enthalpy testing approach) instead of a calorimeter chamber, (2) adding definitions for each fixed compressor speed, (3) adjusting the annual energy consumption and operating cost calculations that provide the basis for the information presented to consumers on the EnergyGuide Label, and (4) requiring that compressor speeds be set in accordance with instructions submitted by LG on April 2, 2019.[13] DOE determined that those changes were necessary to ensure better repeatability and reproducibility of the LG Waiver test procedure, as well as representativeness of the results. 84 FR 20111.

On March 25, 2019, GD Midea Air Conditioning Equipment Co. LTD. (''Midea'') submitted a petition for waiver and application for interim waiver from the room AC test procedure for six room AC models with variable-speed capabilities.[14] Midea sought a test procedure exemption consistent with the approach DOE allowed in the Grant of LG Interim Waiver. DOE reviewed Midea's petition and, based on that review, initially agreed that Midea's suggested procedure, with the same modifications DOE included in the LG Waiver, would allow for the accurate measurement of the energy use for the listed variable-speed room AC models. Therefore, on December 13, 2019, DOE granted Midea an interim waiver from the room AC test procedure (hereafter the ''Grant of Midea Interim Waiver'') for the models listed in Midea's petition, using the alternate test procedure required in the LG Waiver, which published subsequent to Midea's petition for waiver. 84 FR 68159.

Pursuant to 10 CFR 430.27(l), following the grant of any waiver, DOE must publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate the need for continuation of the waiver. As soon thereafter as practicable, DOE must publish in the **Federal Register** a final rule. *Id.* The waiver would then terminate on the effective date of the final rule. 10 CFR 430.27(h)(2).

## II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes amendments to the existing test procedures for room ACs to: (1) Update to the latest versions of industry test methods that are incorporated by reference; (2) adopt new testing provisions for variable-speed room ACs that reflect the relative efficiency gains at reduced cooling loads compared to single-speed room ACs; (3) adopt new definitions consistent with these two proposed amendments; and (4) provide specifications and minor corrections to improve the test procedure repeatability, reproducibility, and overall readability.

DOE has tentatively determined that the proposed amendments would both provide more representative efficiency measurements for variable-speed room ACs and not alter the measured efficiency of single-speed room ACs, which constitute the large majority of units on the market. DOE has also tentatively determined that the proposed test procedure would not be unduly burdensome to conduct. DOE's proposed actions are summarized in Table II–1 and addressed in detail in section III of this document.

TABLE II–1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

| Current DOE test procedure | Proposed test procedure | Attribution |
|---|---|---|
| References industry standards— | Updates references to applicable sections of: | Industry test procedure updates. |
| • ANSI/AHAM RAC–1–2008,<br>• ANSI/ASHRAE Standard 16–2009, and<br>• IEC Standard 62301 First Edition. | • ANSI/AHAM RAC–1–2015,<br>• ANSI/ASHRAE Standard 16–2016 (including relevant cross-referenced industry standards), and<br>• IEC Standard 62301 Second Edition. | |
| Testing, calculation of CEER metric, and certification for all room ACs based on single temperature rating condition. | Testing, calculation of CEER metric, and certification for variable-speed room ACs based on additional reduced outdoor temperature test conditions. | In response to the LG Waiver. |
| —Definition of ''room air conditioner'' does not explicitly include function of providing cool conditioned air to an enclosed space, and references ''prime,'' an undefined term, to describe the source of refrigeration<br>—''Cooling mode'' is an undefined term. | | |
| Definitions— | —Adds the word ''cooled'' in the definition of ''room air conditioner'' to describe the conditioned air a room AC provides and removes ''prime'' from the definition.<br>—Adds definition for ''cooling mode''. | Added by DOE (clarification). |
| Appendix F does not explicitly identify the scope of the test procedure. | Creates new section indicating the appendix applies to the energy performance of room ACs. | Added by DOE (specifies the applicability of the test procedure). |
| Provides that test unit be installed in a manner similar to consumer installation. | —References ANSI/ASHRAE Standard-2016, specifying that the perimeter of louvered room ACs be sealed to the separating partition, consistent with common testing practice.<br>—Specifies that non-louvered room ACs be installed inside a compatible wall sleeve, with the manufacturer-provided installation materials. | Industry test procedure update and added by DOE (additional installation specifications). |
| Calculations for average annual energy consumption, combined annual energy consumption, energy efficiency ratio (EER), and CEER are located in 10 CFR 430.23(f). | —Moves calculations for CEER and annual energy consumption for each operating mode into appendix F.<br>—Removes EER calculation and references entirely, as it is obsolete. | Added by DOE (improve readability). |

[13] The instructions provided by LG on April 2, 2019 were marked as confidential and, as such, were treated as confidential. The document is located in the docket at *https://www.regulations.gov/document?D=EERE-2018-BT-WAV-0006-0010.*

[14] All published documents directly related to the interim waiver are available in docket EERE–2019–BT–WAV–0009 (*https://www.regulations.gov/docket?D=EERE-2019-BT-WAV-0009.*)

## III. Discussion

### A. Room Air Conditioner Definition

DOE defines a ''room air conditioner'' as a consumer product, other than a packaged terminal air conditioner, which is powered by a single-phase electric current and which is an encased assembly designed as a unit for mounting in a window or through the wall for the purpose of providing delivery of conditioned air to an enclosed space. It includes a prime source of refrigeration and may include a means for ventilating and heating. 10 CFR 430.2.

DOE does not propose any changes to the room AC definition in this NOPR that would modify the current scope of covered products. However, as described further below, DOE proposes minor adjustments to the room AC definition to ensure the definition does not inadvertently apply to new products introduced on the market. The proposed revised definition would harmonize with the wording of definitions for other DOE covered products, which DOE believes will help avoid any potential confusion or unintentional overlap in scope of coverage between room ACs and any other products.

In the June 2015 RFI, DOE noted that other consumer products, including portable ACs and dehumidifiers, are also self-encased, powered by a single-phase electric current, refrigeration-based, and deliver conditioned air to an enclosed space, thereby meeting many of the criteria in the room AC definition. DOE also noted, however, that the definition of a room AC specifies that the unit is designed to be mounted in a window or through a wall, which excludes portable ACs and dehumidifiers. DOE suggested in the June 2015 RFI that explicitly excluding other products was unnecessary because of the distinction based on mounting. 80 FR 34843, 34845 (June 18, 2015). AHAM agreed that the room AC definition need not be updated to explicitly exclude other products and further suggested that adding these exclusions would be confusing. (AHAM, June 2015 RFI, No. 5 at p. 2) General Electric Appliances (GE) supported AHAM's comments. (GE, June 2015 RFI, No. 6 at p. 1) [15]

Based on DOE's considerations in the June 2015 RFI, and given that no commenters objected to DOE's suggestion, DOE does not propose to add exclusions for other consumer products in the room AC definition.

[15] GE stated that it supports the comments submitted by AHAM in response to the June 2015 RFI in their entirety and adopted them by reference.

In the June 2015 RFI, DOE also noted that some room ACs may have other functions beyond the cooling, heating, and ventilation functions currently specified in the room AC definition. These additional functions could include air circulation, where air from within the room is circulated without bringing air from the outside into the room; and air cleaning, where electrostatic filtration, ultraviolet radiation, or ozone generators clean the air as it circulates through the unit. 80 FR 34843, 34845 (June 18, 2015). DOE received no comments related to the inclusion of other functions in the room AC definition in response to the June 2015 RFI. DOE understands that these functions do not represent the key functionality of a room AC, and therefore is not proposing that these functions be addressed in the room AC definition at this time.

DOE proposes to add the term ''cooled'' to the room AC definition, so that it refers to a system that ''. . . delivers *cooled,* conditioned air to an enclosed space . . .'' (emphasis added). DOE believes that this revised wording would better represent the key function of a room AC, and would avoid any potential for the room AC definition to cover other indoor air quality systems that could be described as ''conditioning'' the air, but that would not be appropriately included within the scope of coverage of a room AC.

Additionally, as described previously, the current definition of room AC specifies that it includes a prime source of refrigeration. DOE contends that using the word ''prime'' to describe the source of refrigeration in the current definition is extraneous and could be construed as referring to a ''primary'' refrigeration system, a distinction that could inadvertently exclude future products that implement a different technology as the primary source of air conditioning, while implementing a refrigeration loop as the ''secondary'' means of cooling or heating. Primary and secondary means of conditioning air are not uncommon in certain refrigeration products and chiller systems; in fact, some room ACs with heating functionality implement a resistance heater as a supplemental form of heating to the primary heat pump, for use under extreme temperature conditions. DOE also notes that the recently codified portable AC definition was not limited to products with a prime source of refrigeration. For these reasons, DOE proposes to remove the word ''prime'' from the room AC definition.

DOE proposes to incorporate by reference ASHRAE Standard 16 and ANSI/AHAM RAC–1. In particular, Section 3 of ASHRAE Standard 16–2016 contains several definitions for terms defined in EPCA and DOE regulations: Room air conditioner, packaged terminal air conditioner, and packaged terminal heat pump. Where there is a conflict with the EPCA definition, the EPCA definition controls. DOE elsewhere proposes general language to make clear that regulatory text drafted by DOE takes precedence over conflicting language in a document incorporated by reference. Therefore, DOE proposes to include a statement in new Section 0 ''Incorporation by Reference,'' in appendix F as follows: ''If there is any conflict between any industry standard(s) and this appendix, follow the language of the test procedure in this appendix, disregarding the conflicting industry standard language.''

DOE also proposes to reorganize the room AC definition to improve its readability. As noted above, the minor editorial revisions and specifications discussed in this section are not intended to modify the scope of the room AC definition.

In summary, DOE proposes to modify the room AC definition in 10 CFR 430.2 to read as follows:

''*Room air conditioner* means a window-mounted or through-the-wall-mounted encased assembly, other than a 'packaged terminal air conditioner,' that delivers cooled, conditioned air to an enclosed space, and is powered by single-phase electric current. It includes a source of refrigeration and may include additional means for ventilating and heating.

DOE requests comment on the proposed amendments to the room AC definition in 10 CFR 430.2.

DOE also proposes to further specify the scope of coverage of appendix F by adding a new beginning section stating that appendix F covers the test requirements used to measure the energy performance of room ACs. In doing so, DOE would clearly limit the scope of products tested in accordance with appendix F, and would harmonize appendix F with test procedures for other similar covered products, which also include similar introductory statements of scope.

DOE requests comment on the proposed new beginning section to appendix F that would explicitly state the scope of coverage.

### B. Industry Test Standards

The DOE room AC test procedure in appendix F references the following two industry standards as the basis of the cooling mode test: ANSI/AHAM RAC–

1–2008 and ANSI/ASHRAE Standard 16–2009. ANSI/AHAM RAC–1–2008 provides the specific test conditions and associated tolerances, while ANSI/ASHRAE Standard 16–2009 describes the test setup, instrumentation and procedures used in the DOE test procedure. The cooling capacity, efficiency metric, and other indicators are then calculated based on the results obtained through the application of these test methods, described in appendix F and 10 CFR 430.23(f).

New versions of ANSI/AHAM RAC–1 and ANSI/ASHRAE Standard 16 have been released since the publication of the current DOE test procedure. DOE assessed the updated versions of these standards to determine if any updates to the DOE test procedure were warranted.

1. ANSI/AHAM RAC–1

The cooling mode test in appendix F is conducted in accordance with the testing conditions, methods, and calculations in Sections 4, 5, 6.1, and 6.5 of ANSI/AHAM RAC–1–2008, as summarized in Table III–1.

TABLE III–1—SUMMARY OF ANSI/AHAM RAC–1–2008 SECTIONS REFERENCED IN APPENDIX F

| ANSI/AHAM RAC–1–2008 Section | Description |
|---|---|
| 4 | General test requirements, including power supply and test tolerances |
| 5 | Test conditions and requirements for a standard measurement test |
| 6.1 | Determination of cooling capacity in British thermal units per hour (Btu/h) |
| 6.5 | Determination of electrical input in watts (W) |

Since DOE last revised its room AC test procedure in 2011, ANSI/AHAM RAC–1 has been updated and the current standard was released in 2015 as ANSI/AHAM RAC–1–2015, ''Room Air Conditioners'' (ANSI/AHAM RAC–1–2015).

In the August 2017 RFI, DOE asserted that the updates to ANSI/AHAM RAC–1 appear to provide added specificity but would not substantively impact the results of DOE's cooling mode test. Specifically, ANSI/AHAM RAC–1–2015 introduced new provisions for the measurement of standby and off mode power in Section 6.3, as well as the calculations for annual energy consumption and CEER in Sections 6.4 – 6.8. Because those updates do not impact the sections relevant to appendix F, DOE noted that it expects that updating the references to ANSI/AHAM RAC–1–2015 in appendix F would not substantively affect test results or test burden. 82 FR 36349, 36353 (Aug. 4, 2017).

Friedrich Air Conditioning (Friedrich) and AHAM supported updating the reference to ANSI/AHAM RAC–1–2015. (Friedrich, No. 2 at p. 6; AHAM, No. 3 at p. 6) AHAM encouraged DOE to limit any revisions to the room AC test procedure to updating the referenced industry test methods to the most recent versions. (AHAM, No. 3 at p. 2)

Although ANSI/AHAM RAC–1–2015 maintains the same general organization as ANSI/AHAM RAC–1–2008, ANSI/AHAM RAC–1–2015 adds test requirements and conditions for standby and off mode, and heating mode in sections 4 and 5, respectively. Because the DOE test procedure already addressed standby and off mode testing prior to their inclusion in the latest version of the ANSI/AHAM RAC standard and the DOE test procedure does not address heating mode, which is now included in ANSI/AHAM RAC–1–2015, and to avoid confusion regarding the appropriate applicability of ANSI/AHAM RAC, DOE proposes to update the existing references to Sections 4 and 5 of ANSI/AHAM RAC–1–2008 with references to only to the cooling mode-specific subsections of ANSI/AHAM RAC–1–2015: Sections 4.1, 4.2, 5.2.1.1, and 5.2.4.

DOE also notes that the provisions in ANSI/AHAM RAC–1–2015 for measuring electrical power input appear in Section 6.2, rather than Section 6.5 of ANSI/AHAM RAC–1–2008. To reflect this change in section numbers, DOE proposes to update appendix F to reference Section 6.2 of ANSI/AHAM RAC–1–2015 to determine the electrical power input in cooling mode. Because there is no change in substance, simply adjusting the section number cannot affect the test conduct, burden, or results.

DOE requests comment on the proposal to incorporate by reference ANSI/AHAM RAC–1–2015 to adjust the section references in appendix F to limit references to cooling mode-specific sections (by excluding standby, off mode, and heat mode sections), and to update the section reference for measuring electrical power input.

2. ANSI/ASHRAE Standard 16

Appendix F currently references the 1983 version of ANSI/ASHRAE Standard 16, which was reaffirmed in 2009, for cooling mode temperature conditions, methods, and calculations. ANSI/AHAM RAC–1–2015 also references the 1983 version of ANSI/ASHRAE Standard 16 reaffirmed in 2009.

In the August 2017 RFI, DOE noted that a new version of ANSI/ASHRAE Standard 16, published in 2016 (ANSI/ASHRAE Standard 16–2016). ANSI/ASHRAE Standard 16–2016 made a number of updates to the industry standard, including an air-enthalpy test approach as an alternative to the calorimeter approach, heating mode testing, additional clarification on placement of air samplers and thermocouples, stability requirement definitions, and new figures for additional tests and to also improve previous figures. The general cooling mode methodology, however, remains unchanged. 82 FR 36349, 36353 (Aug. 4, 2017). The addition of the air-enthalpy approach provides more flexibility in conducting the tests, and the heating mode test is based on the tests previously included in ANSI/ASHRAE Standard 58–1986 ''Method of Testing for Rating Room Air Conditioner and Packaged Terminal Air Conditioner Heating Capacity.''

AHAM supported updating appendix F to reference ANSI/ASHRAE Standard 16–2016, excluding the adoption of Sections 7.1(b) – (d), which contain the air-enthalpy method and Section 7.1.2, which contains the heating mode test). (AHAM, No. 3 at pp. 6 – 7) AHAM suggested that ANSI/ASHRAE Standard 16–2016 provides additional clarification on placement of air samplers and thermocouples, adds stability requirement definitions, adds new figures for additional tests, and fixes old figures. (*Id.*) DOE recognizes that the general calorimeter test methodology is unchanged in ANSI/ASHRAE Standard 16–2016 and has tentatively determined that the additional detail and clarifying updates would improve the repeatability and reproducibility of test results. First, ANSI/ASHRAE Standard 16–2016 provides best practices for thermocouple and air sampler placement, recognizing that the unique characteristics of each test chamber will result in particular air flow and temperature gradients in the chamber, influenced by the interaction of the reconditioning equipment and the test unit. These practices address the distances for placing the air sampler from the unit discharge points and thermocouple spacing on the air sampling device. Second, Figure 1 and Figure 2 of ANSI/ASHRAE Standard 16 are also updated with additional details and references. Third, Section 5 of ANSI/ASHRAE Standard 16–2016 includes additional provisions regarding instrument calibration and accuracy.

Fourth, ANSI/ASHRARE Standard 16–2016 requires measuring data at more frequent intervals to minimize the sensitivity of the final average value to variations in individual data points, resulting in a more repeatable and reproducible test procedure. DOE expects that requiring more frequent data measurements will have minimal impact on testing burden because most testing laboratories are already using a data acquisition system that has the capability to take more frequent measurements. For these reasons, DOE contends that the improvements in ANSI/ASHRAE Standard 16–2016 warrant inclusion in the updates to appendix F.

DOE requests comment on the proposal to incorporate relevant sections of ANSI/ASHRAE Standard 16–2016 into appendix F.

ANSI/ASHRAE Standard 16–2016 also updates requirements for the accuracy of instruments. The 2009 reaffirmation of ANSI/ASHRAE Standard 16 requires, in section 5.4.2, accuracy to ±0.5 percent of the quantity measured for instruments used for measuring all electrical inputs to the calorimeter compartments. ANSI/ASHRAE Standard 16–2016, in section 5.6.2, includes more specific language (*e.g.,* explicitly mentioning the power input to the test unit, heaters, and other cooling load contributors). To ensure that the electrical input for all key equipment is properly measured, DOE proposes to incorporate these requirements and maintain the requirement of accuracy to ±0.5 percent of the quantity measured for instruments used for measuring all electrical inputs, to the test unit, all reconditioning equipment, and any other equipment that operates within the calorimeter walls.

DOE requests comment on the proposal to incorporate the requirements of ANSI/ASHRAE Standard 16–2016 while maintaining that an accuracy of ±0.5 percent of the quantity measured is applicable to all devices measuring electrical input for the room AC test procedure.

3. ANSI/ASHRAE Standards 41.1, 41.2, 41.3, 41.6, and 41.11

ANSI/ASHRAE Standard 16–2016 references certain industry standards in specifying certain test conditions and measurement procedures. DOE is also proposing to incorporate those industry standards specified in the relevant sections of ANSI/ASHRAE Standard 16–2016. Specifically, DOE is proposing to incorporate by reference: ANSI/ASHRAE Standard 41.1–2013, ''Standard Method for Temperature Measurement, as referenced in ANSI/ASHRAE Standard 16–2016 section 5.1.1 for all temperature measurements except for dew-point temperature; ANSI/ASHRAE Standard 41.2–1987 (RA 1992), ''Standard Methods for Laboratory Airflow Measurement,'' as referenced in Section 5.5.1 of ANSI/ASHRAE Standard 16–2016 for airflow measurements; ANSI/ASHRAE Standard 41.3–2014, ''Standard Methods for Pressure Measurement,'' as referenced in section 5.2.5 of ANSI/ASHRAE Standard 16–2016 for the prescribed use of pressure measurement instruments; ANSI/ASHRAE Standard 41.6–2014, ''Standard Method for Humidity Measurement,'' as referenced in section 5.1.2 of ANSI/ASHRAE Standard 16–2016 for measuring dew-point temperatures using hygrometers; and ANSI/ASHRAE Standard 41.11–2014, ''Standard Methods for Power Measurement,'' as referenced in section 5.6.4 of ANSI/ASHRAE Standard 16–2016 regarding the use and application of electrical instruments during tests. Incorporating these standards will clarify which versions of the standards are required to conduct tests according to the procedure in appendix F.

DOE requests comment on the proposal to incorporate ANSI/ASHRAE Standard 41.1–2013, ANSI/ASHRAE Standard 41.2–1987 (RA 1992), ANSI/ASHRAE Standard 41.3–2014, ANSI/ASHRAE Standard 41.6–2014, and ANSI/ASHRAE Standard 41.11–2014 in appendix F.

C. Variable-Speed Room Air Conditioner Test Procedure

Historically, room ACs have been designed using a single-speed compressor, which operates at full cooling capacity while the compressor is on. To match the cooling load of the space, which in most cases is less than the full cooling power of the compressor, a single-speed compressor cycles on and off. This cycling behavior introduces inefficiencies due to the surge in power draw at the beginning of each ''on'' cycle, before the compressor reaches steady-state performance. Variable-speed room ACs became available on the U.S. market in 2018. These units employ an inverter compressor that can reduce its speed to match the observed cooling load. Accordingly, a variable-speed compressor runs continuously, adjusting its speed up or down as required, thereby avoiding compressor cycling.

The current DOE test procedure measures the performance of a room AC while operating under a full cooling load; *i.e.,* the compressor is operated continuously in its ''on'' state. As a result, the DOE test does not capture any inefficiencies due to compressor cycling. Consequently, the efficiency gains that can be achieved by variable-speed room ACs due to the avoidance of cycling losses are not measured by the current test procedure. DOE proposes to amend its room AC test procedure to include a methodology for determining and applying a ''performance adjustment factor'' for variable-speed room ACs to reflect the avoidance of cycling losses that would be experienced in a representative consumer installation.

DOE conducted investigative testing comparing the performance of a variable-speed room AC with a single-speed room AC under reduced cooling load conditions. DOE installed each room AC in a calorimeter test chamber, set the unit thermostat to 80 degrees Fahrenheit (°F), and applied a range of fixed cooling loads to the indoor chamber.[16] [17] The calorimeter chamber was configured so that the indoor chamber temperature could vary, thereby allowing the test unit to maintain the target indoor chamber temperature by adjusting its cooling operation in response to the changing temperature of the indoor chamber.[18] Figure III–1 shows the efficiency gains and losses for the range of reduced cooling loads tested for each unit, relative to the performance of each unit as tested using appendix F under a full cooling load.[19]

[16] A cooling load is ''applied'' by adjusting and fixing the rate of heat added to the indoor test chamber to a level at or below that of the nominal cooling capacity of the test unit.

[17] This approach aims to represent a consumer installation in which the amount of heat added to a room may be less than the rated cooling capacity of the room AC (*e.g.,* electronics or lighting turned off, people or pets leaving the room, and external factors such as heat transfer through walls and windows reducing with outdoor temperature).

[18] DOE notes that this test chamber configuration differs from the configuration used in appendix F. Appendix F uses a constant-temperature configuration, in which the indoor chamber temperature is held fixed (*i.e.,* the indoor temperature does not drop while the room AC is operational).

[19] For single-speed room ACs under appendix F, the thermostat is typically set as low as possible to ensure that the unit does not cycle on and off during the cooling mode test period.

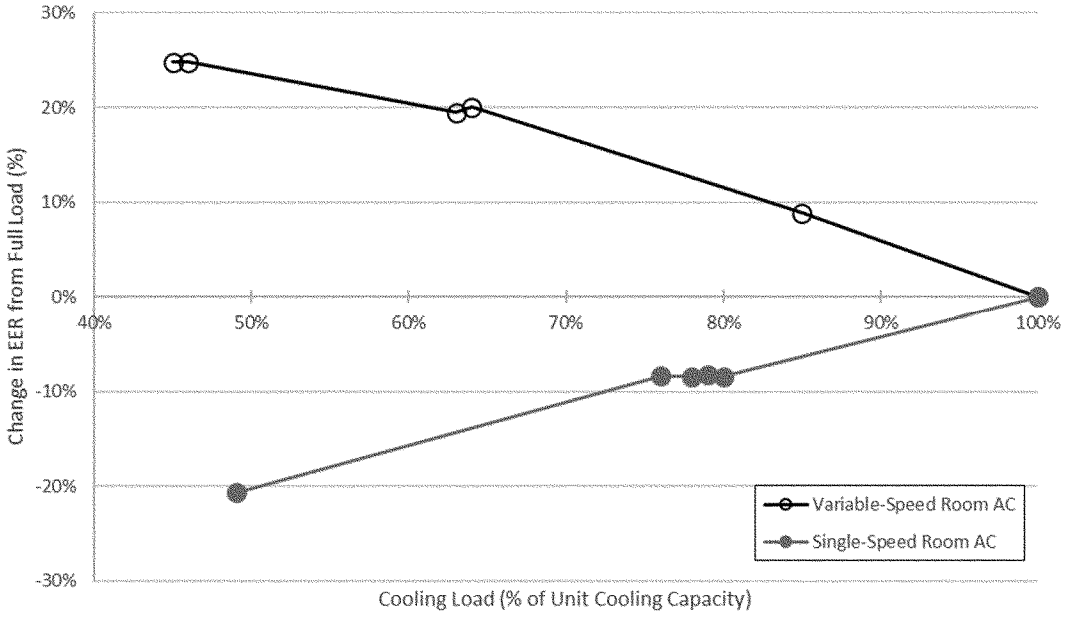


**Figure III-1 Change in EER for Reduced Cooling Loads**

In Figure III–1, the distance of each data point from the x-axis represents the change in efficiency relative to the full-load efficiency for each unit. (The data points at 100-percent cooling load correspond to the appendix F test conditions.) The single-speed room AC efficiency decreases in correlation with a reduction in cooling load, reflecting cycling losses that become relatively larger as the cooling load decreases. In contrast, the efficiency of the variable-speed room AC increases as the cooling load decreases, reflecting the lack of cycling losses and inherent improvements in compressor efficiency associated with lower compressor speeds. These results demonstrate that the current test procedure does not account for significant efficiency gains that variable-speed room ACs can achieve under reduced temperature conditions.

1. Methodology

To measure the efficiency gains for variable-speed room ACs that are not captured by the current DOE test procedure, DOE considered the alternate test procedure provided in the LG Waiver and the Grant of Midea Interim Waiver (collectively, ''the waivers'') for specified basic models of variable-speed room ACs. 84 FR 20111 (May 8, 2019) and 84 FR 68159 (December 13, 2019). The alternate test procedure provides a methodology for obtaining a CEER value by adjusting the CEER value as tested at the 95 °F test condition according to appendix F using a ''performance adjustment factor'' (PAF).

Conceptually, the approach for variable-speed room ACs involves measuring performance over a range of four test conditions with fixed compressor speeds, which collectively comprise representative use. These temperature conditions were derived from the DOE test procedure for central ACs with variable-speed compressors and include three reduced-temperature test conditions—under which variable speed room ACs perform more efficiently than single-speed room ACs—and the test condition specified in the current test procedure. The single-speed room AC test procedure, however, does not factor in the reduced-temperature test conditions under which single-speed units also will perform more efficiently (although not as well as variable-speed room ACs). As a result, comparing variable-speed performance at all test conditions against a single-speed unit at the highest-temperature test condition would not yield a fair comparison. The PAF represents the average relative benefit of variable-speed over single-speed across the whole range of test conditions. It is applied to the measured variable-speed room AC performance only at the high-temperature test condition to provide a comparison to the single-speed existing CEER metric based on representative use.

The steps for determining a variable-speed room AC's PAF are summarized as follows:

- Measure the capacity and energy consumption of the sample unit at the single test condition used for single-speed room ACs (95 °F dry-bulb outdoor temperature), with the compressor speed fixed at the maximum (full) speed.
- Measure the capacity and energy consumption of the sample unit at three additional test conditions (92 °F, 87 °F, and 82 °F dry-bulb outdoor temperature),[20] with compressor speed fixed at full, intermediate, and minimum (low) speed, respectively.[21] Using theoretically determined adjustment factors,[22] calculate the equivalent performance of a single-speed room AC with the same cooling capacity and electrical power input at the 95 °F dry-bulb outdoor temperature, with no cycling losses (*i.e.,* a ''theoretical comparable single-speed'' room AC) for each of the three test conditions.
- Calculate the annual energy consumption in cooling mode at each of the four cooling mode test conditions for a variable-speed room AC, as well as for a theoretical comparable single-speed room AC with no cycling losses. This theoretical single-speed room AC would perform the same as the variable-speed test unit at the 95 °F test

[20] The additional reduced-temperature conditions are described further in section III.C.2 of this document.

[21] The compressor speeds are described further in section III.C.3 of this document.

[22] These adjustment factors are described further in section III.C.4 of this document.

condition, but perform differently at the other test conditions.

- Calculate an individual CEER value at each of the four cooling mode test conditions for the variable-speed room AC, as well as for a theoretical comparable single-speed room AC with no cycling losses.
- Using cycling loss factors derived from an industry test procedure,[23] calculate an adjusted CEER value at each of the four cooling mode test conditions for a theoretical comparable single-speed room AC, which includes cycling losses.
- Using weighting factors [24] representing the fraction of time experienced at each test condition in representative real-world operation, calculate a weighted-average CEER value (reflecting the weighted-average performance across the four test conditions) for the variable-speed room AC, as well as for a theoretical comparable single-speed room AC.
- Using these weighted-average CEER values for the variable-speed room AC and a theoretical comparable single-speed room AC, calculate the PAF as the percent improvement of the weighted-average CEER value of the variable-speed room AC compared to a theoretical comparable single-speed room AC.[25] This PAF represents the improvement resulting from the implementation of a variable-speed compressor.

DOE's proposed approach to addressing the performance improvements associated with variable-speed room ACs is consistent with the test procedures required in the waivers. The following sections of this document describe each aspect of the proposal in greater detail.

2. Test Conditions

As discussed previously, variable-speed room ACs provide improved performance at reduced cooling loads by reducing the compressor speed to match the load, thereby avoiding compressor cycling and associated cycling inefficiencies. DOE recognizes that throughout the cooling season, room ACs operate under various outdoor temperature conditions. DOE also asserts that these varying outdoor conditions present a range of reduced cooling loads in the conditioned space, under which a variable-speed room AC would perform more efficiently than a theoretical comparable single-speed room AC.

To measure this improved performance, DOE proposes a test procedure for variable-speed room ACs that adds three test conditions (92 °F, 87 °F, and 82 °F dry-bulb outdoor temperature) to the current 95 °F, consistent with the test conditions in the waivers. DOE notes that these temperatures represent potential outdoor temperature conditions between the current 95 °F test condition and the indoor setpoint of 80 °F (below which no active cooling would be necessary). These additional test conditions are also consistent with the representative temperatures for bin numbers 6, 5, and 4 in Table 19 of DOE's test procedure for central ACs at appendix M.

DOE requests comment on the proposal to adopt for all variable-speed room ACs these additional test conditions from test procedures required in the waivers for variable-speed room ACs.

3. Variable-Speed Compressor Operation

The DOE test procedure maintains fixed test conditions in the indoor chamber and requires configuring the test unit settings to achieve maximum cooling capacity. As a result, units under test constantly operate at their full cooling capacity, even at the reduced outdoor temperature test conditions described in section III.C.2 of this document, without the compressor cycling (for single-speed units) or compressor speed reduction (for variable-speed units) that would be expected under real-world operation. Therefore, DOE proposes additional test procedure adjustments, beyond reduced outdoor temperature test conditions, to fully represent the potential efficiency gains associated with variable-speed room ACs at reduced cooling loads.

As described previously, in a typical consumer installation, reduced outdoor temperatures would result in reduced indoor cooling loads. A test that would provide constant reduced cooling loads could be considered, but as discussed below in section III.E.1.e of this document, DOE concludes such a test would not be feasible at this time. Therefore, to better represent what would occur in typical consumer usage at reduced outdoor temperatures, DOE proposes to test variable-speed room ACs by fixing a particular compressor speed at each of the outdoor test conditions, as described further in the following sections.

a. Compressor Speeds

To ensure the compressor speeds are representative of actual speeds at the expected cooling loads at each of the outdoor test conditions, DOE proposes to require that the compressor speed be set to full speed at the two highest outdoor temperature test conditions (based on test $A_{Full}$ at 95 °F and test $B_{Full}$ at 92 °F), at intermediate compressor speed at the 87 °F test condition (based on test $E_{Int}$), and at low compressor speed at the 82 °F test condition (based on test $D_{Low}$), consistent with the tests and requirements in Table 8 of the 2017 version of Air-Conditioning, Heating, and Refrigeration Institute (AHRI) Standard 210/240, (AHRI Standard 210/240), ''Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment,'' which specifies representative test conditions and the associated compressor speeds for variable-speed unitary air conditioners. DOE also proposes to add definitions for ''full compressor speed'', ''intermediate compressor speed'', and ''low compressor speed'', which specify how each speed would be determined, as described further in section III.D of this document.

DOE requests comment on the proposal to require fixing the compressor speed settings for variable-speed room ACs to full speed at the 95 °F and 92 °F test conditions, intermediate speed at the 87 °F test condition, and low speed at the 82 °F test condition, in accordance with the requirements in Table 8 of AHRI Standard 210/240.

b. Instructions for Fixing Compressor Speeds

DOE understands that setting and maintaining a specific room AC compressor speed is not typically possible without special control instructions from manufacturers. Therefore, because maintaining fixed compressor speeds is critical to the repeatability of the variable-speed room AC test procedure, DOE proposes that manufacturers provide in each certification report for a variable-speed room AC basic model all necessary instructions to maintain the compressor speeds required for each test condition when testing that basic model. These include the compressor frequency set points at each test condition, instructions necessary to maintain the compressor speeds required for each test condition, and the control settings used for the variable components.

DOE requests comment on the proposal to require that manufacturers provide in their certification reports the

[23] The derivation of these cycling loss factors is described in more detail in section III.C.5 of this document.

[24] These ''fractional temperature bin'' weighting factors are described in more detail in section III.C.6 of this document.

[25] The performance adjustment factor is described in more detail in section III.C.7 of this document.

control settings for each variable-speed room AC basic model required to achieve the fixed compressor speed for each test condition.

c. Boost Compressor Speed

DOE is aware that a variable-speed room AC's full compressor speed may not be its fastest speed. In particular, the fastest compressor speed may be one that is automatically initiated and used for a brief period of time to rapidly reduce the indoor temperature to within typical range of the set point. This compressor speed is referred to as ''Boost Compressor Speed'' in AHRI Standard 210/240 and is defined as a speed faster than full compressor speed, at which the unit will operate to achieve increased capacity. DOE understands that boost compressor speed operation is typically limited in duration and would not significantly contribute to annual energy consumption, as manufacturers have described it as used for limited periods of time on occasions where the indoor room temperature is far out of normal operating range of the set point. Once the indoor room temperature is within the typical operating range of the setpoint, the room AC returns to the ''Full Compressor Speed,'' as defined in AHRI Standard 210/240. AHRI Standard 210/240 does not measure boost compressor speed energy use, and in a final rule published on June 8, 2016, DOE declined to include provisions for measuring boost compressor speed energy use in the central AC test procedure. 81 FR 36992, 37029. Accordingly, DOE does not propose to measure boost compressor speed performance and energy consumption in appendix F at this time because of the expected insignificant impact on annual energy consumption and performance, to harmonize with the industry approach for variable-speed compressor testing, and because DOE has previously opted to forgo including it for other air conditioning products. *Id.*

DOE requests comment on the proposal not to address boost compressor speed performance and energy consumption in appendix F at this time.

4. Capacity and Electrical Power Adjustment Factors

In the proposed approach, a capacity adjustment factor is used to estimate the increased cooling capacity of a room AC at lower outdoor temperature conditions, using a linear extrapolation based on the measured capacity at the 95 °F test condition. Similarly, an electrical power adjustment factor is used to estimate the reduced electrical power draw of a room AC at lower outdoor temperature conditions, using a linear extrapolation based on the measured electrical power draw at the 95 °F test condition. To determine these two adjustment factors, DOE used the MarkN model to model room AC performance at reduced outdoor temperature conditions. These modeling results suggested linear capacity and electrical power adjustment factors of 0.0099 per °F and 0.0076 per °F, respectively.

To confirm the validity of these modeled adjustment factors, DOE tested a sample of 14 single-speed room ACs at a range of reduced outdoor temperature test conditions (92 °F, 87 °F, and 82 °F) and compared the predicted values of cooling capacity and electrical power with the measured values at each test condition. Table III–2 and Table III–3 summarize the results for cooling capacity and electrical power, respectively.

TABLE III–2—COMPARISON BETWEEN MODELED AND TESTED COOLING CAPACITY

| Unit | 92 °F | | | 87 °F | | | 82 °F | | |
|---|---|---|---|---|---|---|---|---|---|
| | Model (Btu/h) | Tested (Btu/h) | Diff. (%) | Model (Btu/h) | Tested (Btu/h) | Diff. (%) | Model (Btu/h) | Tested (Btu/h) | Diff. (%) |
| 1 | 5,890 | 5,850 | −0.6 | 6,170 | 6,070 | −1.8 | 6,460 | 6,300 | −2.5 |
| 2 | 10,920 | 10,810 | −0.9 | 11,440 | 11,060 | −3.4 | 11,970 | 11,330 | −5.4 |
| 3 | 12,160 | 12,340 | +1.5 | 12,740 | 12,880 | +1.1 | 13,330 | 13,320 | −0.1 |
| 5 | 12,430 | 12,320 | −0.9 | 13,030 | 12,640 | −3.0 | 13,620 | 12,890 | −5.7 |
| 6 | 8,660 | 8,490 | −2.0 | 9,070 | 8,570 | −5.9 | 9,490 | 8,680 | −9.3 |
| 7 | 12,400 | 12,180 | −1.8 | 13,000 | 12,310 | −5.6 | 13,590 | 12,360 | −10.0 |
| 8 | 5,360 | 5,410 | +0.8 | 5,620 | 5,590 | −0.6 | 5,880 | 5,770 | −1.9 |
| 9 | 5,760 | 5,640 | −2.0 | 6,030 | 5,850 | −3.2 | 6,310 | 6,000 | −5.3 |
| 10 | 5,440 | 5,530 | +1.6 | 5,700 | 5,730 | +0.6 | 5,960 | 5,790 | −3.0 |
| 11 | 6,520 | 6,410 | −1.7 | 6,830 | 6,490 | −5.2 | 7,140 | 6,520 | −9.6 |
| 12 | 6,350 | 6,320 | −0.5 | 6,650 | 6,500 | −2.4 | 6,960 | 6,820 | −2.0 |
| 13 | 8,150 | 8,180 | +0.4 | 8,540 | 8,530 | −0.1 | 8,930 | 9,080 | +1.6 |
| 14 | 8,830 | 8,630 | −2.3 | 9,260 | 8,960 | −3.2 | 9,680 | 9,090 | −6.5 |
| 15 | 21,860 | 22,440 | +2.6 | 22,920 | 23,270 | +1.5 | 23,970 | 24,260 | +1.2 |
| Average | | | −0.4 | | | −2.2 | | | −4.2 |

**Note:** Unit 4 was not included because it is a variable-speed unit and the modeling factors are only applicable to single-speed units that do not adjust performance at reduced outdoor temperature conditions.

TABLE III–3—COMPARISON BETWEEN MODELED AND TESTED ELECTRICAL POWER DRAW

| Unit | 92 °F | | | 87 °F | | | 82 °F | | |
|---|---|---|---|---|---|---|---|---|---|
| | Model (W) | Tested (W) | Diff. (%) | Model (W) | Tested (W) | Diff. (%) | Model (W) | Tested (W) | Diff. (%) |
| 1 | 414 | 412 | +0.6 | 398 | 393 | +1.3 | 382 | 375 | +1.9 |
| 2 | 894 | 887 | +0.8 | 859 | 846 | +1.6 | 825 | 807 | +2.2 |
| 3 | 989 | 984 | +0.5 | 950 | 938 | +1.3 | 912 | 895 | +2.0 |
| 5 | 1,080 | 1,073 | +0.7 | 1,038 | 1,024 | +1.4 | 996 | 978 | +1.8 |
| 6 | 705 | 701 | +0.6 | 677 | 668 | +1.4 | 650 | 636 | +2.2 |
| 7 | 1,116 | 1,106 | +0.9 | 1,073 | 1,046 | +2.6 | 1,030 | 993 | +3.7 |
| 8 | 433 | 430 | +0.7 | 416 | 412 | +1.0 | 399 | 394 | +1.3 |
| 9 | 435 | 430 | +1.1 | 418 | 413 | +1.2 | 401 | 392 | +2.3 |
| 10 | 435 | 435 | +0.2 | 418 | 417 | +0.2 | 401 | 403 | -0.4 |
| 11 | 537 | 535 | +0.5 | 517 | 510 | +1.3 | 496 | 483 | +2.6 |
| 12 | 514 | 514 | 0.0 | 494 | 492 | +0.4 | 474 | 470 | +0.9 |
| 13 | 643 | 638 | +0.8 | 618 | 610 | +1.3 | 593 | 584 | +1.5 |

TABLE III–3—COMPARISON BETWEEN MODELED AND TESTED ELECTRICAL POWER DRAW—Continued

| Unit | 92 °F | | | 87 °F | | | 82 °F | | |
|---|---|---|---|---|---|---|---|---|---|
| | Model (W) | Tested (W) | Diff. (%) | Model (W) | Tested (W) | Diff. (%) | Model (W) | Tested (W) | Diff. (%) |
| 14 | 647 | 646 | +0.2 | 622 | 615 | +1.1 | 597 | 585 | +1.9 |
| 15 | 2,074 | 2,068 | +0.3 | 1,993 | 2,006 | −0.6 | 1,912 | 1,935 | −1.2 |
| Average | | | +0.6 | | | +1.1 | | | +1.6 |

**Note:** Unit 4 was not included because it is a variable-speed unit and the modeling factors are only applicable to single-speed units that do not adjust performance at reduced outdoor temperature conditions.

The results in Table III–2 generally indicate close agreement (*i.e.,* less than 5 percent difference on average) between the modeled cooling capacity (based on an adjustment factor of 0.0099 per °F) and the measured capacity at each test condition. On average, the tested cooling capacity was within 0.4 percent of the modeled value at the 92 °F test condition, 2.2 percent at the 87 °F test condition, and 4.2 percent at the 82 °F test condition.

Similarly, the results in Table III–3 generally indicate close agreement between the modeled electrical power draw (based on an adjustment factor of 0.0076 per °F) and the measured electrical power draw at each test condition. On average, the tested electrical power draw was within 0.6 percent of the modeled value at the 92 °F test condition, 1.1 percent at the 87 °F test condition, and 1.6 percent at the 82 °F test condition.

DOE has tentatively determined that the average difference of less than 5 percent between the modeled values and the experimental values confirms the validity of these modeled adjustment factors. Therefore, DOE proposes using the modeled adjustment factors of 0.0099 per °F and 0.0076 per °F for capacity and electrical power, respectively, to calculate the theoretical comparable single-speed room AC performance at reduced outdoor temperature test conditions.

DOE requests comment on the proposal to use the capacity and electrical power adjustment factors of 0.0099 per °F and 0.0076 per °F, respectively.

5. Cycling Loss Factors

To represent the cycling losses of a theoretical comparable single-speed room AC at reduced outdoor temperature test conditions and expected reduced cooling loads, DOE identified cycling loss factors to apply to the interim CEER values at each of the four cooling mode test conditions for a theoretical comparable single-speed room AC. Table III–4 shows the proposed cycling loss factors for each of the four proposed test conditions.

TABLE III–4—PROPOSED CYCLING LOSS FACTORS

| Test condition | Evaporator inlet air, °F | | Condenser inlet air, °F | | Cycling loss factor |
|---|---|---|---|---|---|
| | Dry bulb | Wet bulb | Dry bulb | Wet bulb | |
| Test Condition 1 | 80 | 67 | 95 | 75 | 1.0 |
| Test Condition 2 | 80 | 67 | 92 | 72.5 | 0.971 |
| Test Condition 3 | 80 | 67 | 87 | 69 | 0.923 |
| Test Condition 4 | 80 | 67 | 82 | 65 | 0.875 |

These cycling loss factors are based on the default cycling loss factors in Section 11.2 of AHRI Standards 210/240. The cycling loss factor at the 82 °F test condition for a theoretical comparable single-speed room AC is consistent with the default cooling degradation coefficient of 0.25, which corresponds to a part-load (cycling loss) factor of 0.875, as determined in Section 11.2 of AHRI Standard 210/240. The remaining cycling loss factors for the other test conditions are consistent with linear interpolation between the cycling loss factor of 0.875 at the 82 °F test condition and the cycling loss factor of 1.0 at the 95 °F test condition, at which no cycling is expected.

DOE requests comment on the proposal to implement cycling loss factors consistent with AHRI Standard 210/240 to represent the expected performance of a theoretical comparable single-speed room AC at reduced outdoor temperature test conditions.

6. Test Condition Weighting Factors

In the proposed approach, the four interim CEER values representing each of the four cooling mode test conditions are combined, using four weighting factors, into a single weighted-average CEER value. The resulting weighted-average CEER value represents the weighted-average performance across the range of outdoor test conditions. DOE calculated weighting factors based on the fractional temperature bin hours in Table 19 of DOE's test procedure for central ACs at appendix M. DOE identified the fractional temperature bin hours representing the four test conditions in the proposed approach, and normalized these four values from appendix M so that they sum to 1.00.

Table III–5 shows the proposed weighting factors for each of the four proposed test conditions.

TABLE III–5—PROPOSED TEMPERATURE CONDITION WEIGHTING FACTORS

| Test condition | Evaporator inlet air, °F | | Condenser inlet air, °F | | CEER weighting factor |
|---|---|---|---|---|---|
| | Dry bulb | Wet bulb | Dry bulb | Wet bulb | |
| Test Condition 1 | 80 | 67 | 95 | 75 | 0.05 |
| Test Condition 2 | 80 | 67 | 92 | 72.5 | 0.16 |

TABLE III–5—PROPOSED TEMPERATURE CONDITION WEIGHTING FACTORS—Continued

| Test condition | Evaporator inlet air, °F | | Condenser inlet air, °F | | CEER weighting factor |
|---|---|---|---|---|---|
| | Dry bulb | Wet bulb | Dry bulb | Wet bulb | |
| Test Condition 3 | 80 | 67 | 87 | 69 | 0.31 |
| Test Condition 4 | 80 | 67 | 82 | 65 | 0.48 |

DOE requests comment on the proposed weighting factors associated with each of the outdoor test conditions.

7. Performance Adjustment Factor

The final step in the proposed approach is to calculate the PAF, representing the improvement over a theoretical comparable single-speed room AC resulting from the implementation of a variable-speed compressor. The PAF would be calculated as the percent improvement of the weighted-average CEER value of the variable-speed room AC compared to the weighted-average CEER value of a theoretical comparable single-speed room AC under the four defined test conditions.

After calculating the PAF, it would be multiplied by the CEER value of the variable-speed unit when tested at the 95 °F test condition according to appendix F, resulting in the final CEER metric for the variable-speed room AC.

DOE expects that the variable-speed room AC CEER values would be comparable to single-speed room AC CEER values as a result of applying the adjustment factor to the variable-speed room AC CEER value determined in accordance with the current single-speed test method in appendix F. By adjusting the variable-speed room AC CEER values to be comparable to single-speed room AC CEER values, consumers will have the information they need to understand the relative efficiency of both types of room AC.

DOE requests comment on the proposed calculations to determine a PAF, which would adjust the CEER of a variable-speed room AC to appropriately account for its efficiency improvements relative to a theoretical comparable single-speed room AC under varying operating conditions.

8. Air-Enthalpy Test Alternative

DOE recognizes the additional test burden associated with testing variable-speed room ACs at multiple test conditions as proposed. In an effort to minimize that additional test burden, the Grant of LG Interim Waiver test procedure provided that LG could optionally test its variable-speed room ACs using the air-enthalpy method. Following the publication of the Grant of LG Interim Waiver, DOE conducted investigative testing to further analyze the air-enthalpy method and its suitability for testing room ACs. As described below, this testing demonstrated that this method was unrepresentative and inconsistent, and remedying these deficiencies would be unduly burdensome.

DOE tested nine room ACs according to the air-enthalpy procedure prescribed by ANSI/ASHRAE Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment.'' DOE constructed plenums to match the cross sectional area of each room AC evaporator and condenser exhaust, with instrumented ducts connected to each. A variable-speed fan at the end of each duct was used to maintain a zero static pressure at the test unit exhaust. Tests were conducted in accordance with the indoor and outdoor test conditions specified in appendix F, and the instrumentation in the duct measured the psychrometric characteristic of the air in addition to the air flow rate to obtain the cooling capacity. To determine whether there was reasonable correlation between the two sets of results and, thus, whether the air-enthalpy procedure would be a viable alternative approach, DOE compared the cooling capacities measured according to this air-enthalpy method to the capacities obtained via the calorimeter method currently specified in appendix F. Table III–6 shows the measured cooling capacity and efficiency obtained for each of these eight test units using the air-enthalpy and calorimeter methods, and highlights the differences in results between the two approaches.

TABLE III–6—COOLING CAPACITY AND EFFICIENCY USING THE AIR-ENTHALPY METHOD AND THE CALORIMETER METHOD

| Unit # | Indoor air flow (CFM) | Calorimeter capacity (Btu/h) | Air-enthalpy capacity (Btu/h) | Capacity difference (%) | Calorimeter EER (Btu/Wh) | Air-enthalpy EER (Btu/Wh) | EER difference (%) |
|---|---|---|---|---|---|---|---|
| 8 | 131 | 5,210 | 4,803 | −7.8 | 11.8 | 10.6 | −9.7 |
| 9 | 161 | 5,591 | 5,059 | −9.5 | 12.6 | 11.3 | −10.1 |
| 10 | 126 | 5,284 | 4,908 | −7.1 | 11.9 | 10.9 | −8.0 |
| 11 | 147 | 5,228 | 4,715 | −9.8 | 10.8 | 9.7 | −10.7 |
| 12 | 152 | 6,164 | 5,650 | −8.3 | 11.7 | 10.6 | −9.4 |
| 13 | 197 | 7,914 | 7,814 | −1.3 | 12.0 | 11.8 | −1.8 |
| 14 | 227 | 8,576 | 8,165 | −4.8 | 13.0 | 12.4 | −4.1 |
| 15 | 459 | 2,1233 | 2,1626 | +1.8 | 10.0 | 10.1 | +0.7 |

The results in Table III–6 indicate a range of differences between the air-enthalpy method and the calorimeter methods, for both cooling capacity and efficiency, which appears to correlate with the evaporator exhaust, or indoor, air flow rate from each unit. Five of the eight units (Units 8 through 12) demonstrated relatively poor agreement between the two methods, with an average decrease in cooling capacity of 8.5 percent and an average decrease in efficiency of 9.4 percent when using the air-enthalpy method. These units all had indoor air flow rates at or below 161 cubic feet per minute (CFM). Conversely, the unit with the largest air flow rate of 459 CFM (Unit 15) showed a small increase in capacity and efficiency when tested using the air-enthalpy method. The remaining two units (Units 13 and 14) had air flow rates between 161 CFM and 459 CFM, and showed only a modest decrease of

less than 5 percent in both capacity and efficiency.

DOE asserts that these results depend on the measurement apparatus available to the testing laboratory for the air-enthalpy method. DOE understands that air-enthalpy test equipment currently used by testing laboratories is not typically designed to accurately measure air conditioning products with airflow rates lower than approximately 200 CFM because typical test equipment is optimized for larger air conditioners with significantly higher airflow rates. The results for Units 8 through 12 support this assertion: All of these had evaporator airflows substantively below 200 CFM, and the performance for each unit measured using the air-enthalpy and calorimeter approaches differed by more than five percent on average. DOE is aware that air-enthalpy equipment that is optimized to measure units with airflow between 50 and 500 CFM exists. However, such equipment may be costly to design, develop, and produce, because it is not readily available and may require custom manufacturing. In addition, the air-enthalpy method does not measure any heat transfer within and through the unit chassis, while the calorimeter test does. Because of the unrepresentative and inconsistent results obtained with the air-enthalpy test equipment that testing laboratories are likely to already own, as well as the higher cost and limited availability of equipment that would be necessary to obtain consistent results for all room ACs of differing airflow rates, DOE contends that the air-enthalpy test method would be unduly burdensome for testing laboratories to implement for room ACs at this time. DOE further notes that, in the waivers, DOE did not allow the air-enthalpy test method as an alternative to the calorimeter test method due to the concerns outlined above. 84 FR 20111 (May 8, 2019), 84 FR 68159 (Dec. 13, 2019). Therefore, DOE is not proposing in this NOPR to allow testing of variable-speed room ACs using the air-enthalpy test method.

DOE seeks comment on the proposal to not include an optional alternative air-enthalpy test method for variable-speed room ACs in appendix F.

9. Product Specific Reporting Provisions

As described, the proposed amendment to Appendix F to test variable-speed room ACs at multiple cooling mode test conditions would require testing each unit with a fixed compressor speed at each test condition. To ensure test reproducibility, DOE is proposing to require, in 10 CFR 429.15, manufacturers to provide DOE all necessary instructions to maintain the compressor speeds required for each test condition for a variable-speed basic model, as additional product-specific information pursuant to 10 CFR 429.12 (b)(13). DOE expects that this requirement would add a *de minimis* incremental burden to the existing reporting requirements.

DOE requests comment on the proposal to include in 10 CFR 429.15 compressor frequencies and control settings as additional product-specific information for certification of each variable-speed room AC basic model.

10. Estimated Annual Operating Cost Calculation

In conjunction with the proposed amendments for testing variable-speed room ACs, DOE is proposing corresponding amendments to the calculation that provides the basis of the annual energy consumption and operating cost information presented to consumers on the EnergyGuide Label. These changes would allow for an appropriate comparison of the annual energy consumption and operating costs between single-speed room ACs and variable-speed room ACs. As such, DOE proposes that for variable-speed room ACs, the average annual energy consumption used in calculating the estimated annual operating cost in 10 CFR 430.23(f) would be a weighted average of the annual energy consumption at each of the four test conditions in newly added Table 1 of appendix F and the annual energy consumption in inactive mode or off mode. DOE proposes, however, that the electrical power input reported for variable-speed room ACs for purposes of certification in 10 CFR 429.15(b)(2) would be the value measured at the 95 °F rating condition, to maintain consistency with the cooling capacity measured at the same condition.

DOE requests comment on the proposal to calculate estimated annual operating cost for variable-speed room ACs using a weighted-average annual energy consumption based on the four cooling mode test conditions in the proposed, new Table 1 of appendix F. DOE also requests comment on the proposal to report variable-speed room AC input power for certification purposes using the value measured at the 95 °F rating condition.

11. Potential Cost Impacts

The test procedure amendments proposed above would result in additional test burden and cost for testing variable-speed room ACs, mainly due to the additional time associated with testing cooling mode performance of variable-speed room ACs under four total test conditions, compared to the single cooling mode test currently required in appendix F. Under the LG Waiver, LG is already testing its variable-speed room ACs using the proposed approach and accordingly would incur no additional cost due to the proposed test procedure amendments. Likewise, under the Grant of Midea Interim Waiver, Midea is also already testing its variable-speed room ACs using the proposed approach and so would not incur any additional cost either due to the proposed test procedure amendments. DOE is not aware of other manufacturers of variable-speed room ACs, although the additional burden described above would be applicable to any entities that begin manufacturing a variable-speed room AC and introduce it to the U.S. market. Given that variable-speed room ACs are not available in the U.S. market from any other manufacturers besides LG and Midea, the proposed test procedure amendments in this NOPR regarding variable-speed room ACs would not result in any additional cost to manufacturers.

*D. Definitions*

DOE proposes to add a number of definitions to appendix F to accompany the proposed amendments described in this document. None of these proposed definitions would modify the current scope of covered products. The following sections describe each proposed definition in detail.

DOE proposes to define three key terms that currently appear in Appendix F but have no definitions: cooling mode, cooling capacity, and combined energy efficiency ratio. Although room ACs may sometimes operate in other modes as discussed further in section III.E of this proposed rule, the room AC CEER metric determined in appendix F is based primarily on performance in cooling mode, and several of the proposed amendments also reference ''cooling mode.'' DOE proposes to establish the following definitions for cooling mode, cooling capacity, and combined energy efficiency ratio in appendix F:

''Cooling mode'' means an active mode in which a room air conditioner has activated the main cooling function according to the thermostat or temperature sensor signal or switch (including remote control).

''Cooling capacity'' means the amount of cooling, in Btu/h, provided to an indoor conditioned space, determined in Section 4.1 of appendix F.

''Combined energy efficiency ratio'' is the energy efficiency of a room air conditioner as measured in Btu/Wh and

determined in Section 5.2.2 of appendix F for single-speed room air conditioners and Section 5.3.12 of appendix F for variable-speed room air conditioners.

To accompany the proposed amendments affecting variable-speed basic models, DOE proposes to define single-speed and variable-speed room ACs as follows:

''Single-speed room air conditioner'' means a type of room AC that cannot automatically adjust the compressor speed based on detected conditions.

''Variable-speed room air conditioner'' means a type of room AC that can automatically adjust compressor speed based on detected conditions.

In addition, DOE proposes to establish definitions for the three compressor speeds required for variable-speed testing. DOE proposes to refer to these compressor speeds as ''full,'' ''intermediate,'' and ''low'' based on the test procedure terminology of AHRI Standard 210/240. The proposed definitions are as follows:

''Full compressor speed (full)'' means the compressor speed at which the unit operates at full load test conditions, achieved by following the instructions certified by the manufacturer.

''Intermediate compressor speed (intermediate)'' means a compressor speed higher than the low compressor speed by one third of the difference between low compressor speed and full compressor speed with a tolerance of plus 5 percent (designs with non-discrete speed stages) or the next highest inverter frequency step (designs with discrete speed steps), achieved by following the instructions certified by the manufacturer.

''Low compressor speed (low)'' means the compressor speed at which the unit operates at low load test conditions, achieved by following the instructions certified by the manufacturer, such that $Capacity_4$, the measured cooling capacity at test condition 4 in Table 1 of appendix F, is not less than 47 percent and not greater than 57 percent of $Capacity_1$, the measured cooling capacity with the full compressor speed at test condition 1 in Table 1 of appendix F.

DOE is proposing a definition for low compressor speed based on the definition in AHRI Standard 210/240. To ensure that the low and intermediate compressor speeds result in representative cooling capacity under reduced loads, as explained in the following paragraphs, DOE is additionally proposing that the low compressor speed definition require that the test unit's measured cooling capacity at Test Condition 4, specified in Table III–5 of this document, be not less than 47 percent and not greater than 57 percent, of the measured cooling capacity when operating at the full compressor speed at Test Condition 1, also specified in Table III–5 of this document.

DOE developed this range based on the Building Load Calculation, Equation 11.60, in AHRI Standard 210/240, which relates the building load to an AC's full-load cooling capacity and outdoor temperature. DOE adapted this calculation for the room AC test procedure by normalizing Equation 11.60 so that full-load operation is assumed to occur at a 95 °F outdoor temperature, consistent with the outdoor test condition defined in the current room AC test procedure, rather than 98 °F as assumed by Equation 11.60. DOE used the normalized equation to determine the representative cooling load at an outdoor temperature of 82 °F as a percentage of the full-load cooling capacity at an outdoor temperature of 95 °F. Based on this analysis, an outdoor temperature of 82 °F would result in a cooling load of 57 percent of full-load cooling capacity. Therefore, DOE proposes that the representative cooling load at the low compressor speed and outdoor temperature of 82 °F (*i.e.* the temperature represented by Test Condition 4 in Table III–5), is 57 percent of the unit's cooling capacity when operating at 95 °F (*i.e.,* Test Condition 1 in Table III–5).

DOE recognizes that variable-speed room ACs may use compressors that vary their speed in discrete steps and may not be able to directly operate at a speed that provides 57 percent cooling capacity precisely; therefore, the defined cooling capacity associated with the low compressor speed is best presented as a range rather than a single value. DOE proposes that a 10-percent range would accommodate compressors that vary their speed in discrete steps.

DOE further proposes using 57 percent cooling load as the upper bound of the 10-percent range to define the cooling capacity associated with the lower compressor speed (*i.e.,* the range would be defined as 47 to 57 percent). The justification for using 57 percent as an upper bound, rather than as a midpoint in the 10-percent range, is as follows. Defining the upper bound of the 10-percent cooling load range as 57 percent would ensure that a variable-speed room AC is capable of matching the representative cooling load (57 percent of the maximum) at the 82 °F outdoor test condition, while providing the performance benefits associated with variable-speed operation. In contrast, if the 10-percent range were to be defined as, for example, 52 to 62 percent (with 57 percent as the midpoint), a variable-speed room AC could be tested at 60 percent, for example, without demonstrating the capability to maintain variable-speed performance down to 57 percent.

In summary, DOE proposes in newly added section 2.16 of appendix F to define ''low compressor speed (low)'' as the compressor speed specified by the manufacturer at which the unit operates at low load test conditions, such that the measured cooling capacity at the 82 °F outdoor test condition shall be no less than 47 percent and no greater than 57 percent of the unit's cooling capacity when operating at the 95 °F test condition.

DOE requests comment on the proposal to add new definitions for cooling mode, cooling capacity, combined energy efficiency ratio, single-speed room air conditioner, variable-speed room air conditioner, variable-speed compressor, full compressor speed (full), intermediate compressor speed (intermediate), and low compressor speed (low) in appendix F.

*E. Active Mode Testing*

The following sections describe proposed amendments and other considerations regarding the active mode testing provisions of appendix F.

1. Cooling Mode

a. General Test Approach

The current DOE room AC test procedure uses a calorimeter test method to determine the cooling capacity and associated electrical power input of a room AC. Under this approach, the test unit is installed between two chambers, one representing the indoor side and the other representing the outdoor side, which are both maintained at constant conditions by reconditioning equipment. The room AC operates in cooling mode, transferring heat from the indoor side to the outdoor side, while the reconditioning equipment counteracts the effects of the room AC to maintain constant test chamber conditions. The room AC cooling capacity is determined by measuring the required energy inputs to the reconditioning equipment.

In response to the June 2015 RFI, AHAM noted that it planned to conduct a round-robin test to identify sources of potential variation in the room AC test procedure. AHAM stated that because it believes that the current room AC standards are stringent, and that slight variation in the test procedure would

have a significant impact in meeting standards, any DOE test procedure amendments should address potential sources of variation. (AHAM, June 2015 RFI, No. 5 at p. 5) In this NOPR, DOE is proposing various test procedure modifications intended to improve repeatability and reproducibility and mitigate potential areas of variation. While DOE has not quantified the cost impacts of these proposed changes, based on its analysis described in section III.L.1 of this document, DOE believes that they would serve to reduce test burden by reducing the potential need for tests to be re-run due to variation. DOE welcomes AHAM's round-robin test data to identify areas of variation in the room AC test procedure and encourages other interested parties to provide comment and feedback on this issue.

b. Test Setup and Air Sampling

In the August 2017 RFI, DOE noted that Section 4.2.7 of ANSI/ASHRAE 16–2009, which is incorporated by reference in the DOE test procedure, requires the calorimeter chamber conditions to be verified by air sampled from a location that is representative of the temperatures surrounding the unit and that simulate the conditions in which the unit operates in the field. As DOE stated, there is no procedure to verify whether the measured chamber temperature reading is representative of conditions at the test unit condenser and evaporator inlet, which may be affected by recirculation from the condenser and evaporator exhaust, respectively, thereby potentially reducing test repeatability and reproducibility. 82 FR 36349, 36353. In the August 2017 RFI, DOE requested data on more specific requirements for air sampling devices within the calorimeter test chambers to improve test repeatability. *Id.*

Friedrich asserted that the positioning of the air samplers impacts test repeatability, especially for through-the-wall units which intake and exhaust condenser air on the same plane. Friedrich recommended that the air sampler measurements be verified using a thermocouple grid at the evaporator and condenser air inlets. (Friedrich, No. 2 at p. 5)

AHAM stated that it does not currently have information that the thermocouple placement as prescribed in ANSI/ASHRAE Standard 16–2009 affects test repeatability and suggested that a balanced temperature is achieved throughout the calorimeter chamber. AHAM further noted that, unlike in a psychrometric test approach, the current calorimeter test approach takes into account any recirculation that would occur in the field. (AHAM, No. 3 at p. 6)

DOE is aware that the size, capability, and orientation of components within calorimeter test chambers may vary significantly, and that third-party laboratories extensively analyze their chambers and testing apparatus to maintain consistent and accurate air sampling measurements. DOE also understands that temperature gradients and unique airflow patterns can result from the interaction of a chamber reconditioning apparatus and the room AC under test, and that these interactions are particular to and dependent upon factors such as chamber size and shape, chamber equipment arrangement, size of reconditioning apparatus, and others, as noted in ANSI/ASHRAE Standard 16–2016 Section 8.2.7. Therefore, DOE contends that universal requirements for air sampling instrumentation and thermocouple placement could potentially reduce test accuracy and reproducibility. As discussed in section III.B.2 of this document, DOE is proposing to update the reference to ANSI/ASHRAE Standard 16 to the most current 2016 version, which includes additional clarification on best practices for air sampler and thermocouple placement.

c. Air-Enthalpy Test

As discussed in section III.B.2 of this document, DOE is proposing to use the calorimeter test method specified in ANSI/ASHRAE Standard 16–2016 for determining the cooling mode performance in appendix F. ANSI/ASHRAE Standard 16–2016 additionally contains an air-enthalpy test method (also referred to as a psychrometric test method), in which a technician places instruments in or near the evaporator air stream to measure the rate of cooled air added to the conditioned space. In the June 2015 RFI and the August 2017 RFI, DOE discussed the potential differences in accuracy and test burden associated with the two test methods and requested comment on the air-enthalpy method, specifically its applicability, accuracy, and associated test burden. 80 FR 34843, 34847 (July 18, 2015) and 82 FR 36349, 36353 (Aug. 4, 2017).

AHAM opposed the use of the air-enthalpy method as an alternative to the calorimeter method, stating that the calorimeter method is supported by historical data and is repeatable, while the repeatability of the air-enthalpy method for room ACs had not yet been assessed. According to AHAM, implementing this alternative test method would likely increase variation in testing and cause challenges for third-party verification and enforcement testing. (AHAM, June 2015 RFI, No. 5 at p. 3; AHAM, No. 3 at p. 7)

Friedrich also opposed the use of the air-enthalpy method for room ACs, based on internal testing that it stated showed a 2 to 3-percent variation in test results for the calorimeter method. Friedrich suggested that the variability of a psychrometric method for room ACs would be greater than the current variability associated with the calorimeter method. Friedrich added that psychrometric testing: (1) would not represent actual installation conditions, (2) would add uncertainty to the exhaust air wet-bulb temperature measurements, and (3) would fail to capture cooling from the portion of the room AC chassis installed in the room. Friedrich supported not updating the reference of ANSI/ASHRAE Standard 16–2009 in the DOE test procedure until further round-robin investigation is completed. (Friedrich, No. 2 at pp. 6–7)

DOE recognizes that installing test ducts on the evaporator and condenser exhausts to measure the air-enthalpy and calculate cooling capacity may impact the air flow, particularly on the evaporator side where room ACs typically locate the inlet and outlet in close proximity, and thus produce results that may not be representative of typical installations. The calorimeter method requires no test ducts or instrumentation that might impede or redirect airflow. DOE also agrees with Friedrich that, unlike the calorimeter method, the air-enthalpy method does not capture heat loss through the chassis to the room and further notes that the air-enthalpy method also may not capture possible heat transfer due to internal air leakage through the chassis between the indoor and outdoor test chambers.

As discussed in section III.C.8 of this document, DOE conducted testing to investigate any differences in test results between the air-enthalpy and calorimeter approaches. That testing showed a wide range of discrepancies between the air-enthalpy method and the calorimeter method, for both cooling capacity and efficiency. The largest differences were observed for units with evaporator airflows below 200 CFM, suggesting that the air-enthalpy test method as typically conducted with existing instrumentation does not produce results representative of actual room AC performance or comparable to measured performance in a calorimeter chamber. DOE expects that obtaining more accurate results would require specialized test equipment that is

limited in availability and costly to design, develop, and produce.

Finally, DOE notes that the results of AHAM's round-robin testing results are not yet available to further evaluate the repeatability and reproducibility of the air-enthalpy method.

For these reasons, DOE is not proposing to allow the use of the air-enthalpy method for determining room AC cooling mode performance at this time.[26]

DOE seeks comment on the proposal not to include an air-enthalpy test approach for determine cooling mode performance of room ACs.

d. Side Curtain Heat Leakage and Infiltration Air

DOE considered the installation requirements for room ACs during testing and the impact of installation on efficiency performance, as described in the following sections.

Room ACs are designed to be installed in a window opening or through a wall, with the compressor and condenser outside the conditioned space and the evaporator inside the conditioned space, as shown in Figure III–2.

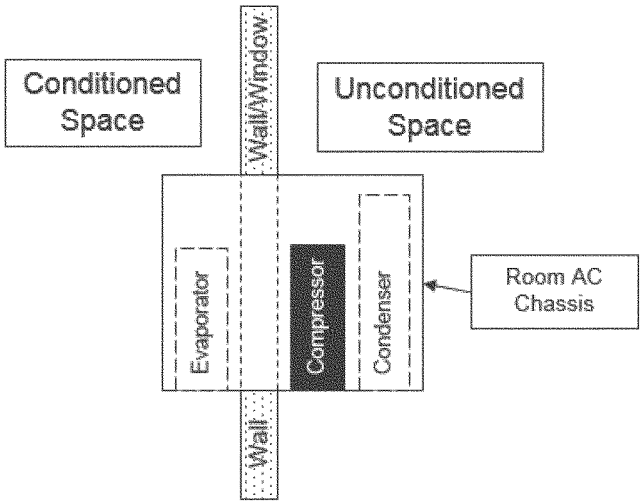


**Figure III-2 Typical Room Air Conditioner Installation – Side View**

The unit's outer case (*i.e.,* ''chassis'') provides a boundary between the outdoor and indoor sides, leading to potential air leakage (and therefore, heat leakage) into or out of the conditioned space. This leakage can occur within the room AC chassis (*i.e.,* internal heat leakage) or around the chassis (*i.e.,* external heat leakage), and may negatively impact the performance of the room AC. External heat leakage consists of two main forms: (1) Infiltration of outdoor air into the conditioned space; and (2) heat leakage through and around non-chassis installation components, designed to secure the room AC and prevent air leakage.

Section 4.2.2 of ANSI/ASHRAE Standard 16–2009, referenced by the current DOE room AC test procedure, directs that the test unit be installed with no efforts made to seal the internal construction of the unit.[27] Consequently, any internal heat leakage through the room AC that would occur in a typical consumer installation is accounted for in the current room AC test procedure.

Regarding the external sealing to avoid heat leakage, section 4.2.2 of ANSI/ASHRAE Standard 16–2009 requires that the test unit be installed in a way that is similar to its normal installation. DOE is aware that common industry practice for testing louvered room ACs is to install the room AC using a sealed setup, *i.e.,* the area around the test unit is sealed. This sealing prevents any inclusion of air leakage around the unit chassis. Any remaining gaps are typically insulated with tape to ensure a complete seal around the test unit. Consequently, any external heat leakage around the unit that may occur in a typical consumer installation is not typically accounted for by laboratories when conducting the room AC test procedure. DOE considered whether to clarify the installation instructions for room ACs to account for external heat leakage. In the following subsections, DOE describes the proposed additional direction intended to further account for the external heat leakage in a typical consumer installation.

Non-Louvered (Through-The-Wall) Room ACs

Non-louvered room ACs, (*i.e.,* those intended for through-the-wall installations) are installed inside a wall sleeve. Although the wall sleeve is designed to fit snugly within the wall, there is usually a small gap between the wall sleeve and the room AC, leading to potential air leakage into the conditioned space. Also, the room AC and wall sleeve represent a break in the building envelope through which thermal bridging [28] may occur, thereby transferring unwanted heat into the conditioned space. The air and heat leakage mechanisms for through-the-wall installations are shown in Figure III–3.

[26] Although DOE is proposing to reference ANSI/ASHRAE Standard 16–2016, which includes an optional air-enthalpy method, DOE proposes to only reference those sections in ANSI/ASHRAE Standard 16–2016 that apply to the calorimeter method.

[27] Note that the same requirements are retained in Section 6.1.1.4 of ANSI/ASHRAE Standard 16–2016.

[28] Thermal bridging refers to the conductive heat transfer that can occur through the room AC chassis and wall sleeve, which are usually made of metal. The metal acts as an ''easy'' path for heat transfer between the indoor side and the outdoor side of the building, reducing the effective insulation of the building and leading to heat gain, which is undesirable when a consumer seeks to cool an indoor space.

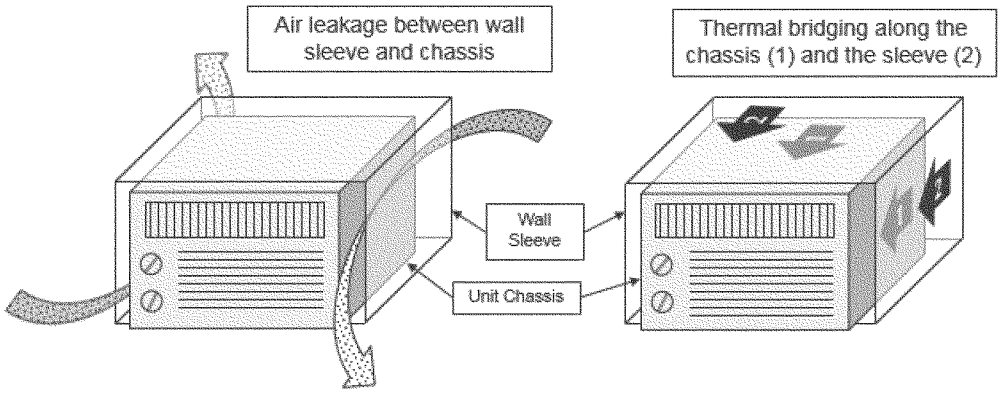


**Figure III-3 Air and Heat Leakage Pathways, Non-Louvered Room Air Conditioners**

DOE is aware that many manufacturers currently test non-louvered room ACs with compatible wall sleeves, in accordance with the existing requirement in the DOE test procedure that no effort be made to seal the unit internally before cooling mode testing. Regarding external sealing to avoid heat leakage, DOE is also aware that manufacturers typically test non-louvered room ACs with the included trim frame and other manufacturer-provided installation materials. As the non-louvered room ACs are installed in accordance with the manufacturer instructions provided to consumers, this setup would be similar to its normal installation.[29]

Some test laboratories have requested additional direction regarding the general setup—specifically, whether a wall sleeve is required when testing non-louvered room ACs, and if so, which wall sleeve must be used. Therefore, DOE proposes to specify in a new section 3.1.1 of appendix F that room ACs designed for through-the-wall installation (*i.e.,* non-louvered room ACs) must be installed inside a compatible wall sleeve (in accordance with the installation instructions provided to consumers), with the trim frame and other manufacturer-provided installation materials that are included in the retail package when purchasing the unit, where applicable. DOE believes that this proposed instruction would improve the representativeness and the reproducibility of test results. Because these supplemental instructions are consistent with the current requirement to install the test unit in a way that is similar to its normal installation and with DOE's understanding of current testing practice, these proposed amendments are not expected to increase test burden or change the test conduct from appendix F.

DOE requests comment on the proposal to specify in appendix F that non-louvered room ACs, which are designed for through-the-wall installation, must be installed using a compatible wall sleeve (per manufacturer instructions), with the provided or manufacturer-required rear grille, and with the included trim frame and other manufacturer-provided installation materials.

Louvered (Window) Room ACs

Louvered room ACs, designed for window installation, are typically installed using manufacturer-provided side curtains to cover the area of the window opening that is not covered by the unit itself. Side curtains reduce, but generally do not eliminate, air leakage between the conditioned and unconditioned space. Some heat leakage is also possible through the side curtains themselves and surrounding installation materials.

For hung-sash windows,[30] the top sash can be positioned in direct contact with the top side of the chassis. Two side curtains extend horizontally from the sides of the chassis. For this type of installation, the air leakage pathways are: (1) Through the gap between the surface of the chassis and the edges of the window opening, which are usually covered with side curtains (described below); and (2) through the gap between the two sashes. Manufacturers typically provide weather stripping to reduce air leakage between the window sashes.

For sliding windows,[31] the sash can be positioned in direct contact with the left or right side of the chassis. One curtain is typically provided that extends upward from the chassis to the top edge of the window opening. With this type of installation, the air leakage pathways are: (1) Through the gap between the surface of the chassis and top edge of the window opening, which is usually covered with a curtain; and (2) through the gap between the two sashes.

For casement windows, which have no sliding sashes, the window panels are attached to hinges and rotate to open or close the window. Consequently, the width and height of the window opening cannot be adjusted to match the size of the room AC chassis. Because of this, casement-type room ACs are usually designed for a narrow range of window widths. With this type of installation, the gaps between the surface of the chassis and the edges of the window opening represent significant leakage pathways.

Figure III–4 and Figure III–5 show the various air infiltration and heat leakage pathways for louvered room ACs.

[29] Note that Section 6.1.1.4 of ANSI/ASHRAE Standard 16–2016 requires the air conditioner be installed per the manufacturer instructions, which DOE contends is consistent with the normal installation requirements in ANSI/ASHRAE Standard 16–2009.

[30] A sash is a window panel that usually holds one or more panes of glass. In hung-sash windows, the sashes can be moved vertically along a rail in order to open or close the window.

[31] In sliding windows, the sashes can be moved horizontally along a rail.

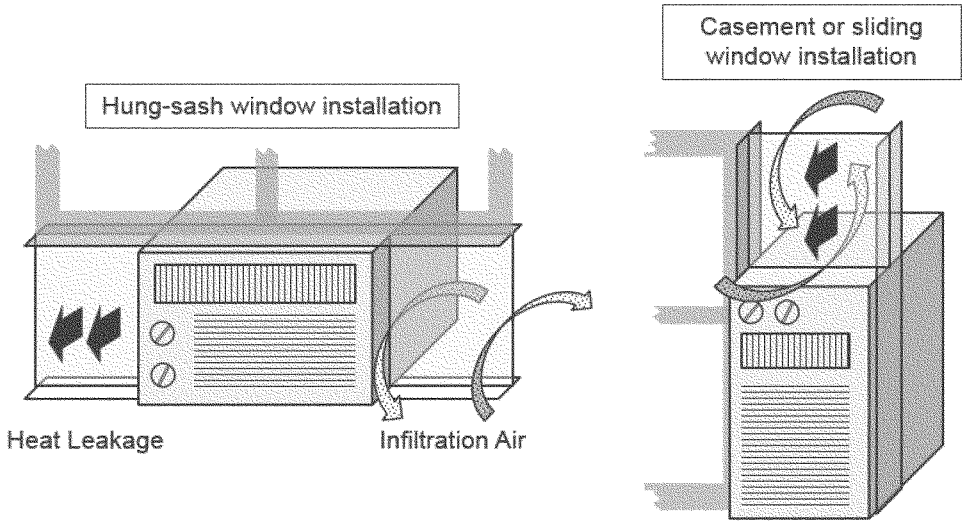


**Figure III-4 Air and Heat Leakage Pathways, Louvered Room Air Conditioners in Hung-Sash and Casement/Slider Window Installations**

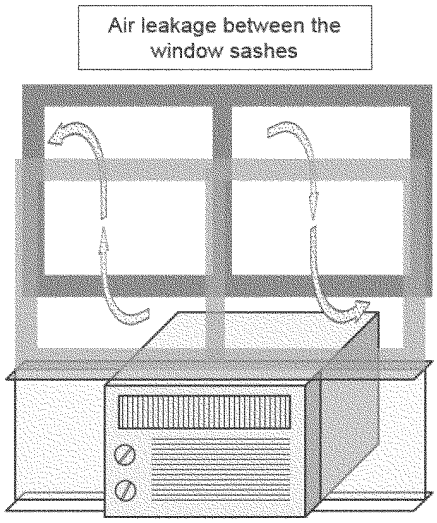


**Figure III-5 Air Leakage Between Sashes, Louvered Room Air Conditioners in a Hung-Sash Window Installation**

As described previously, Section 4.2.2 of ANSI/ASHRAE Standard 16–2009 requires that the test unit be installed in a way that is similar to its normal installation. No further direction is provided as to what constitutes normal installation. DOE is aware that common industry practice is to set up a louvered room AC for testing so that all air leakage around the unit chassis is precluded. DOE understands that current industry practice is to snugly install the room AC in the test chamber partition wall using insulating material to approximate the insulating properties of the fixed part of the separating partition, as shown in Figure III–6. Any remaining gaps are typically insulated with tape to ensure a complete seal around the test unit. Under those conditions, the test measures energy needed to compensate for internal heat leakage through the unit and the thermal bridging, but any external leakage (*i.e.,* infiltration air leakage around the unit chassis or heat leakage through the manufacturer-provided installation materials) is eliminated, neglecting any effect external air leakage may have on energy efficiency.

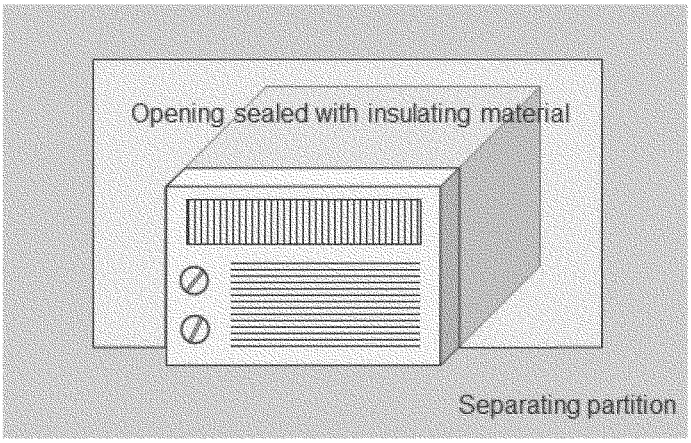


**Figure III-6 Typical Louvered Room Air Conditioner Installation for Testing**

The current U.S. Environmental Protection Agency (EPA) ENERGY STAR Product Specification for Room Air Conditioners Version 4.1 (ENERGY STAR V4.1), [32] requires that window units be provided with weather stripping and/or gasket materials appropriate for all window size(s) for which the unit is designed. Furthermore, the criteria require that the side curtains be tight fitting to minimize air leaks and contain insulation in the panel with a minimum insulation value of R1.[33] ENERGY STAR-qualified room ACs, with R1 side curtains, comprised 26 percent of basic models on the market as of September 2018.

Discussion of Comments

In the August 2017 RFI, DOE noted that, when conducting the calorimeter test prescribed in ANSI/ASHRAE Standard 16–2009 and referenced by appendix F, the test unit is installed so that all air and heat leakage around the unit that would normally be present in a typical installation is precluded by means of sealing. DOE requested comment on testing room ACs in accordance with the manufacturer-provided installation materials. 82 FR 36349, 36352 (Aug. 4, 2017).

Friedrich opposed the use of manufacturer-provided installation materials that are included in the retail package when purchasing the unit for room AC testing. Friedrich noted that DOE has not specified a required side curtain surface area for testing, which Friedrich stated could result in laboratories using varying side curtain surface areas, leading to significant test result variability and potential consumer confusion. Friedrich also suggested that laboratories may not be capable of testing with side curtains in place without significant test apparatus modifications. Friedrich further noted that, if the psychrometric method specified in ANSI/ASHRAE Standard 16–2016 were adopted, the heat loss between rooms would not be captured even when using manufacturer-provided side curtains. Friedrich also suggested that manufacturer-provided installation materials are not necessary because the existing test requirement of no more than 0.005 inches of water column pressure difference between the indoor and outdoor test chambers limits the effects of heat and air loss between the test chambers. (Friedrich, No. 2 at pp. 3–4) DOE agrees that requiring the use of side curtains may introduce additional variability in the test procedure, specifically regarding the size of the test chamber partition wall openings used by labs, leading to differing side curtain extensions and thus different air and heat leakage impacts. DOE further recognizes the additional test burden associated with modifying the partition wall and installing side curtains and believes that this burden outweighs the benefit of measuring the potentially minimal air and heat leakage due to the small pressure differential limit between the two test chambers.

AHAM noted that heat loss through the installation materials is already accounted for in Section 4.2.2 of ANSI/ASHRAE Standard 16–2009, referenced in appendix F, which requires that the room AC be installed in a manner similar to its normal installation with no effort to seal the internal construction of the unit to prevent air leakage, other than specifically provided by the manufacturer's consumer installation instructions. AHAM asserted that any modification to the instructions in ANSI/ASHRAE Standard 16–2009 would provide little additional value and is not necessary to ensure the test procedure is representative of an average use cycle. According to AHAM, doing so would increase test variation due to varying test lab window sizes and would require laboratories to stock different sizes of insulated partitions.

AHAM noted that window kits are not used in the portable AC test procedure, and that the portable AC test procedure only measures duct heat loss and infiltration air heat transfer because portable ACs draw condenser air from the conditioned space, which AHAM believes is not applicable to room ACs. AHAM claimed that the test burden increase from requiring the use of installation materials would not be justified by the minimal benefit to consumers. (AHAM, No. 3 at p. 5) As discussed above, DOE is aware that common laboratory practice is to forgo the use of manufacturer-provided installation materials included in the retail package and instead to seal to prevent air and heat leakage around the unit. DOE is also aware that laboratories typically modify the chamber partition wall to fit each test unit by adding or removing partition wall insulating materials. DOE also notes that, as discussed later in this section, Sections 6.1.1.4 and Section 8.4.2 of ANSI/ASHRAE Standard 16–2016 require that the perimeter of the AC under test must be sealed to the separating partition, which is consistent with common practice when testing room ACs and ensures repeatability and reproducibility. Therefore, DOE recognizes that an alteration to the common practice by requiring the use of all manufacturer-provided installation materials, including side curtains, may present additional test burden.

[32] The ENERGY STAR Certification Criteria V4.1 is available at *https://www.energystar.gov/sites/default/files/ENERGY%20STAR%20Version%204.0%20Room%20Air%20Conditioners%20Program%20Requirements.pdf*

[33] The insulation value is determined by the Federal Trade Commission's (FTC) Labeling and Advertising of Home Insulation regulations, 16 CFR part 460.

The California IOUs and Joint Advocates commented that room ACs should be installed with manufacturer-provided installation materials. (California IOUs, No. 4 at p. 4; Joint Advocates, No. 6 at p. 3) The California IOUs believe that the current test setup does not reflect real-world room AC operation and thus is contrary to EPCA's representative use requirements. According to the California IOUs, room ACs are typically installed in windows and secured with side curtains, wall sleeves, and other manufacturer-provided materials that are included in the retail package when purchasing the unit and are usually poorly insulated and allow for air infiltration, unlike the insulated wall in a calorimeter chamber. The California IOUs, therefore, encouraged DOE to capture the efficiency impacts of air infiltration, heat leakage, and pressure differentials in the room AC test procedure by requiring the use of all manufacturer-provided installation materials. (California IOUs, No. 4 at p. 4) The Joint Advocates asserted that the current DOE test procedure for room ACs does not represent actual unit efficiency for consumers, and therefore the Joint Advocates believe that testing room ACs with manufacturer-provided installation materials would incentivize improvements for installation materials to reduce infiltration air leakage. The Joint Advocates stated that reducing infiltration air would save energy and improve consumer comfort by reducing hot air entering from outdoors. (Joint Advocates, No. 6 at p. 3)

As discussed previously, DOE recognizes that the common practice for installing room ACs for testing does not necessarily utilize all manufacturer-provided installation materials. However, DOE recognizes the potentially significant variability and additional test burden associated with the use of side curtains and other manufacturer-provided installation materials that are not currently used. Further, DOE notes that Sections 6.1.1.4 and Section 8.4.2 of ANSI/ASHRAE Standard 16–2016 require that the perimeter of the AC under test must be sealed to the separating partition, which is consistent with common practice when testing room ACs. This requirement represents a change from the instructions in ANSI/ASHRAE Standard 16–2009, which in Section 4.2.2, as discussed, requires that the room AC be installed in a manner similar to its normal installation.

DOE conducted testing to investigate the inherent air infiltration and conductive heat transfer effects associated with manufacturer-provided installation materials included in the retail package when purchasing the unit. DOE tested 13 room ACs both with and without manufacturer-provided installation materials, otherwise following the appendix F test procedure and conditions. DOE installed each room AC in accordance with both ANSI/ASHRAE Standard 16–2009 and manufacturer instructions in a 34-inch wide window opening of the calorimeter test chamber partition wall. Because room AC chassis vary in width and height, the area filled by side curtains varied from unit to unit in the 34-inch wide window opening, and the height of the window opening was adjusted to match the height of each unit. Table III–7 displays the results of testing with and without manufacturer-provided installation materials under appendix F conditions.

TABLE III–7—IMPACT OF MANUFACTURER-PROVIDED INSTALLATION MATERIALS ON ROOM AIR CONDITIONER COOLING CAPACITY

| Unit No. | Energy star rated | Measured cooling capacity | | Measured cooling capacity change with installation materials | |
|---|---|---|---|---|---|
| | | Without installation materials (*Btu/h*) | With installation materials (*Btu/h*) | (*Btu/h*) | (%) |
| 1 | Yes | 5720 | 5450 | −270 | −4.7 |
| 2 | No | 10600 | 10530 | −70 | −0.7 |
| 3 | Yes | 11750 | 11950 | +210 | +1.8 |
| 4 | Yes | 20630 | 20470 | −150 | −0.7 |
| 8 | No | 5210 | 5260 | +50 | +1.0 |
| 9 | Yes | 5590 | 5580 | −10 | −0.2 |
| 10 | No | 5280 | 5420 | +130 | +2.5 |
| 11 | Yes | 5240 | 5270 | +30 | +0.6 |
| 12 | No | 6160 | 6050 | −110 | −1.8 |
| 13 | Yes | 7910 | 7940 | +30 | +0.4 |
| 14 | Yes | 8580 | 8340 | −230 | −2.7 |
| 15 | Yes | 21230 | 21200 | −40 | −0.2 |

DOE expected that the measured cooling capacity with installation materials would be consistently lower (worse) than the measured cooling capacity without installation materials (for which the unit is tightly sealed during testing to prevent air and heat leakage). However, as shown in Table III–7, DOE observed no consistent change in cooling capacity when using manufacturer-provided installation materials included in the retail package when purchasing the unit, with capacity impacts ranging from a reduction of 4.7 percent to an increase of 2.5 percent relative to the measured capacity without installation materials. Additionally, DOE found that the magnitude and direction (positive or negative) of the measured capacity impacts did not correlate with the presence of insulated side-curtains (*i.e.,* units that ship with minimum R1 side curtains were measured as having both higher and lower cooling capacity when tested with the side curtains installed). Nor did the magnitude and direction of the measured cooling capacity change correlate with the rated cooling capacity. Instead, the unexpected presence of positive cooling capacity changes suggests that the observed variations are driven more by measurement uncertainty than heat transfer losses.

Regardless of the source of the variation, however, all capacities measured while using manufacturer-provided installation materials were within 5 percent of those measured without installation materials. Because the variation in test results was minimal, DOE expects that any potential

benefits of more representative cooling capacity measurements by testing with manufacturer-provided installation materials included in the retail package when purchasing the unit would be small and would be outweighed by the burden associated with such a testing configuration. Therefore, DOE is not proposing to require the use of manufacturer-provided installation materials in appendix F for louvered room ACs at this time.

DOE requests comment on the proposal, consistent with ANSI/ASHRAE Standard 16–2016, Sections 6.1.1.4 and Section 8.4.2, not to require installing louvered room ACs with the manufacturer-provided installation materials, including side curtains, and instead to require testing with the partition wall sealed to the unit.

*e. Test Conditions*

In the June 2015 RFI, DOE noted that the current room AC test procedure measures performance only under full-cooling-load outdoor test conditions of 95 °F dry-bulb and 75 °F wet-bulb, and therefore, technologies that improve performance under less extreme part-load conditions, such as variable-speed compressors and variable-opening expansion devices, would not improve rated performance under the current test procedure. DOE noted that for central ACs and heat pumps, the seasonal energy efficiency ratio (SEER) accounts for various annual conditions by testing at multiple rating conditions. DOE therefore requested comment on the merits of revising the current room AC test procedure to account for the benefit of technologies that improve performance under multiple cooling mode temperature conditions. 80 FR 34843, 34848 (June 18, 2015).

The Natural Resources Defense Council, Appliance Standards Awareness Project, Alliance to Save Energy, National Consumer Law Center, and Northwest Energy Efficiency Alliance (hereafter the ''Joint Commenters'') stated that measuring part-load performance in the DOE room AC test procedure would encourage manufacturers to develop products with variable-speed capabilities and other part-load technologies not available as of 2015 in room ACs available on the market. The Joint Commenters suggested that a metric that captures part-load performance could result in additional energy savings because room ACs are often used as the primary air conditioning source, either for a single room or an entire house, and thus are used more frequently than just for supplemental air conditioning on the hottest days and would likely benefit from part-load efficiency improvements. (Joint Commenters, June 2015 RFI, No. 7 at pp. 1–2)

The California IOUs commented that the effective and efficient use of part-load operation can be useful in maintaining a more constant room temperature while reducing overall energy consumption. However, they noted that the impact of part-load efficiency would depend on the number of operating hours associated with part-load operation in the overall performance metric. Therefore, the California IOUs suggested that DOE assess the potential efficiency benefits of part-load technologies and the number of operating hours under part-load conditions per year, claiming that including part-load efficiency in the regulated metric would only be effective if part-load operation represents a significant part of the annual operating hours. The California IOUs suggested that the part-load operating hours should not include hours during the summer, when room ACs typically operate at full-load conditions, nor should the inclusion of part-load operation result in a reduction of overall room AC operating efficiencies or an increase in peak demand. If DOE finds that part-load efficiency has a minimal impact on overall performance, the California IOUs expressed continued support for the current test condition. (California IOUs, June 2015 RFI, No. 8 at p. 3)

AHAM opposed part-load performance measurements, based on DOE's conclusion in the January 2011 Final Rule that such measurements would result in significant effort and additional test burden with minimal energy savings. (AHAM, June 2015 RFI, No. 5 at p. 4) In the January 2011 Final Rule, DOE stated that sufficient information was not available at the time to assess whether technologies that improve part-load efficiency would be cost effective, and that many of the technology options that could improve full-load efficiency would also improve part-load efficiency, so the current test conditions were indicative of the efficiency at a range of conditions. Thus, DOE decided to not amend the test procedure to measure part-load performance at that time. Nevertheless, DOE noted in the January 2011 Final Rule that it could consider amendments if additional information on this subject were to become available for future rulemakings. 76 FR 971, 1016 (Jan. 6, 2011). DOE notes that the market has developed since the January 2011 Final Rule, and that at least three variable-speed room ACs are now on the market. DOE expects that manufacturers will continue to introduce variable-speed room ACs to the market in the near term, because, on December 28, 2017, EPA released its ENERGY STAR 2018 Emerging Technology Award Criteria for Room ACs with Efficient Variable Output, which recognizes room ACs with variable-speed compressors that are more than 25 percent more efficient than a similar room AC with a single-speed compressor.[34] DOE expects that the introduction of these ENERGY STAR award criteria will incentivize manufacturers to further adopt variable-speed compressors in room ACs.

Multiple Test Conditions

On June 1, 2016, DOE established a test procedure for portable ACs that assesses cooling performance under two cooling mode test conditions, representative of typical conditions and extreme conditions (hereafter the ''June 2016 Portable AC Final Rule''). 81 FR 35241, 35249–35250. As discussed, room ACs are currently tested at a single outdoor test condition, 95 °F dry-bulb and 75 °F wet-bulb temperature, which aligns with only one of the two cooling mode test conditions for portable ACs. Considering the many similarities between the two products (*i.e.,* consumer utility, usage patterns, internal components), DOE requested comment in the August 2017 RFI on whether it would be appropriate to harmonize the two test procedures by including an additional test condition for room AC cooling mode testing (specifically, 83 °F dry-bulb and 67.5 °F wet-bulb outdoor temperature). 82 FR 36349, 36351–36352 (Aug. 4, 2017).

Friedrich opposed an additional cooling mode test condition for room ACs, stating that room ACs are optimized for the current 95 °F test condition and any changes to the test procedure would require system and component design changes. For example, Friedrich asserted that less expensive and more reliable capillary tube expansion devices would likely need to be replaced with more expensive and complex thermostatic expansion valves or variable orifice metering devices. Friedrich stated that just one component change could increase manufacturing cost by more than 15 percent as well as increase repair and installation complexity, and that the current room AC chassis may not have sufficient space to accommodate such devices. (Friedrich, No. 2 at pp. 1–2) DOE recognizes that

[34] Additional information on the ENERGY STAR Emerging Award for Industry Stakeholders is available at *https://www.energystar.gov/about/awards/energy-star-emerging-technology-award/energy-star-emerging-technology-award-industry.*

optimizing performance at any test condition likely would require design and component modifications, which may include adjusting the expansion device, blower motor, compressor, and other performance-related modification. DOE understands that any time a design change is initiated, significant engineering and manufacturing costs are incurred, for example, to fit larger and more complex components into size-restricted chassis. However, although an amended test procedure requiring testing room ACs at additional cooling mode test conditions would necessitate a corresponding amendment to the energy conservation standards for room ACs, the design and manufacturing costs incurred to redesign units to perform optimally at these conditions are outside of the scope of a test procedure rulemaking analysis. DOE notes that it would analyze in an energy conservation standards rulemaking any design and manufacturing costs potentially incurred to improve the efficiency of products.

AHAM and Friedrich opposed the proposed additional cooling mode test condition, saying that it would add significant test burden by effectively doubling the number of tests needed to certify a room AC, lengthening test time, and resulting in less laboratory availability, which could significantly slow time to market and disrupt production schedule. (AHAM, No. 3 at p. 4; Friedrich, No. 2 at p. 2) DOE agrees that an additional cooling mode test condition would increase test burden, though it would not require an adjustment in test unit installation and would instead necessitate adjusting only the outdoor test chamber conditions, since the indoor conditions remain the same for both cooling mode test conditions. DOE expects the total additional burden associated with testing a reduced operating test would be 4 to 5 hours. This reflects the time required to adjust the outdoor test chamber test conditions (about 2 hours for the chamber to reach a lower outdoor temperature test condition), and the additional test time, which is estimated to be 2 to 3 hours (approximately 1 to 2 hours for chamber and unit stabilization and 1 hour for the rating test period, as specified by ANSI/ASHRAE Standard 16–2009).

AHAM further stated that if DOE did consider an additional cooling mode test condition it would be inappropriate to consider an additional cooling mode test condition comparable to that which is established for dual-duct portable ACs (*i.e.,* the most similar portable AC configuration to room ACs). AHAM cited a September 2016 AHAM Home Comfort Survey that indicated the vast majority of portable ACs on the market are a single-duct configuration. As a result, most portable ACs would be tested with a single outdoor cooling mode test condition. AHAM therefore suggested it would be inappropriate to select test conditions for room ACs that align with the type of portable AC that a minority of consumers own and would not result in a comparable rating between all portable ACs and room ACs. (AHAM, No. 3 at p. 4) DOE notes that the additional cooling mode test condition that was adopted for dual-duct portable ACs was developed using room AC ownership data and a climate analysis; and, because the supporting data were derived from room ACs, DOE asserts that the previous analysis conducted in support of the portable AC test procedure applies to room ACs.

AHAM and Friedrich also contended that including a second test condition could confuse consumers, suggesting that adding a cooler test condition would result in a larger Seasonally Adjusted Cooling Capacity (SACC) compared to the cooling capacity as measured under the current conditions, which could result in consumers purchasing units that have too little capacity and are unable to meet cooling needs during peak periods. Friedrich further commented that if DOE were to proceed with these changes to the test procedure, it should coordinate with EPA and the Federal Trade Commission (FTC) to harmonize metrics across efficiency programs. (AHAM, No. 3 at p. 4; Friedrich, No. 2 at p. 2) DOE agrees that introducing a second cooling mode test condition for all room ACs would result in a general increase in the reported cooling capacities for all units, which may cause confusion for consumers who have become familiar with the typical capacity values in this well-established market.[35] Under the Memorandum of Understanding that EPA and DOE signed on September 30, 2009, DOE is responsible for the test methods and metrics to be used in the ENERGY STAR program when qualifying products. Therefore, if DOE were to modify the energy efficiency metric for room ACs in appendix F, EPA would accordingly consider revised ENERGY STAR qualification criteria based upon the amended DOE test procedure. Additionally, EPCA requires that any revisions to the labels for room ACs, for which the FTC is responsible, include disclosure of the estimated annual operating cost (determined in accordance with DOE's test procedures prescribed under section 6293 of EPCA), unless the Secretary determines that disclosure of estimated annual operating cost is not technologically feasible, or the FTC determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. (42 U.S.C. 6294(c)(1)) Were DOE to amend the room AC test procedure to include an additional test condition, DOE understands that the FTC would develop any revised labeling requirements to disclose a revised annual energy cost calculation based on any modified energy efficiency metric.

The California IOUs opposed an additional cooling mode test condition, suggesting it would not be representative of actual usage conditions in California, where room ACs operate at peak capacity or close to it (*i.e.,* at conditions represented by the 95 °F dry-bulb test condition) for longer than 750 hours per year and are typically purchased in reaction to heatwaves, when peak cooling is required. The California IOUs cautioned that allocating less weight to the 95 °F dry-bulb cooling mode test condition may devalue the cooling mode operating performance that is most valued by consumers and is the basis for their purchase decisions. (California IOUs, No. 5 at p. 2) AHAM added that the current room AC test procedure tests the ''worst case'' energy use scenario and there is no reason to test room ACs under new test conditions that would result in less energy use. (AHAM, No. 3 at p. 4) Friedrich stated that room ACs optimized for a new reduced-temperature test condition would not have enough capacity to meet the cooling load at the existing higher-temperature condition. (Friedrich, No. 2 at p. 2) The California IOUs also claimed that an additional cooling mode test condition would interfere with calculating a room AC's peak demand power draw, which can have a large impact on peak load operation and is often the basis for future program development, rate structure, and overall power needs. (California IOUs, No. 5 at pp. 2–3)

The California IOUs and Joint Advocates commented that if DOE were to include an additional part-load cooling mode test condition, the test procedure would likely capture the benefits of technologies, such as variable-speed compressors, that enable

[35] DOE notes that consumer confusion about the number of temperature conditions was not a concern for portable ACs because DOE only recently established a test procedure for portable ACs that requires multiple cooling mode test conditions. Before that there was no DOE test procedure; the DOE test procedure for portable ACs has always required multiple cooling mode temperature conditions.

improved part-load performance. These commenters further stated that, in addition to improving part-load performance and efficiency by reducing compressor cycling and improving heat exchanger effectiveness, variable-speed compressors would provide more consistent room temperature and humidity control, improved dehumidification, and reduced noise levels. They suggested that adding variable-speed compressors would enable utilities to create incentives for consumers to use more intelligently controlled and connected room ACs with little impact on consumer comfort and would enable more flexible demand side resources to integrate increasing amounts of intermittent renewable energy sources into the grid. (California IOUs, No. 5 at p. 3; Joint Advocates, No. 6 at p. 2) However, the California IOUs suggested that further data are necessary prior to modifying the room AC test procedure to measure room AC performance and efficiency at part-load test conditions and to identify an appropriate alternative test condition and operating hours that would effectively capture part-load operation. (California IOUs, No. 5 at p. 4) Friedrich suggested that variable-speed compressors would not be feasible for room ACs due to increased installation and controls costs, as well as chassis space constraints. (Friedrich, No. 2 at p. 2) AHAM urged DOE to wait until variable-speed compressors are available in a number of products that would be sufficient to evaluate the impacts of a test procedure change before considering a test procedure change to account for them. (AHAM, No. 3 at p. 5)

DOE agrees with some, but not all, of these comments. The inclusion of additional cooling mode test conditions would better reflect operation under multiple temperature conditions, and product information based on testing using such conditions may create an incentive to increase the proportion of variable-speed room ACs on the market. Use of variable-speed compressors, in turn, may be beneficial to both consumers and utilities, because room ACs would operate more effectively and efficiently under multiple indoor and outdoor temperature conditions. However, DOE also recognizes that a test procedure that measures performance at both peak temperature conditions and a less extreme temperature condition would require a new overall weighted metric that would combine the performance under both temperature conditions because it would change measured energy consumption. DOE further recognizes that room AC performance has historically been based on peak performance under elevated outdoor temperature test conditions, which is the condition under which consumers most expect their room ACs to perform, and that peak performance would no longer be clearly portrayed by a weighted metric.[36] Furthermore, DOE notes information about variable-speed room ACs is limited: There are few variable-speed products on the market, and data about them is limited. DOE does not believe that the benefits of measuring performance at reduced outdoor temperature test conditions for all room ACs would outweigh the expected substantial increase in test burden, utility impacts, and consumer confusion that would result. Therefore, DOE is proposing to continue using a single test condition for testing single-speed room ACs, with no changes to the current CEER metric. However, as discussed in section III.C.2 of this document, DOE is proposing to require testing multiple test conditions for variable-speed room ACs, in order to capture the relative efficiency improvements associated with variable-speed operation. The test procedure would represent the performance of variable-speed room ACs using adjustments to the CEER calculations to obtain the same metric, which is based on performance at the maximum 95 °F outdoor rating condition.

DOE requests comment on the proposal not to include additional cooling mode test conditions for single-speed room ACs.

Cooling Test Alternatives

The current DOE test procedures for room ACs and packaged terminal air conditioners (PTACs) involve fixed temperature and humidity tests in a calorimeter at full-load or part-load conditions, during which specific dry-bulb and wet-bulb temperatures are maintained throughout the cooling mode test period. The DOE test procedure for central ACs requires testing at multiple cooling mode test conditions, with fixed temperature and humidity at each condition, similar to the current room AC test procedure, which has one test condition with a fixed temperature and humidity.

The Joint Advocates stated that the lower-temperature test condition discussed in the August 2017 RFI is a fixed temperature and humidity test and would not capture single-speed compressor cycling losses that would occur in typical temperature conditions. By comparison, a dynamic-cooling-load test, such as that being developed by the Canadian Standards Association, during which the compressor would cycle off when the setpoint is reached, may capture such cycling losses. The Joint Advocates suggested that the most representative room AC test procedure (*i.e.,* a dynamic-cooling-load test that measures part-load performance) would spur adoption of variable-speed compressors and adjustable fan speeds because it would capture cycling losses in single-speed units and increased efficiency from these technologies. (Joint Advocates, No. 6 at pp. 2–3)

DOE is aware of two approaches to measure part-load performance of a room AC, constant-cooling-load testing and dynamic-cooling-load testing. In a constant-cooling load test, a cooling load is applied to the indoor room using reconditioning equipment, and this cooling load does not change throughout the test. In a dynamic-cooling-load test, the cooling load applied to the indoor room follows a load profile which approximates how the cooling load on a typical unit would change throughout the day. In both the dynamic-cooling-load test suggested by the Joint Advocates and a constant-cooling-load test explored in DOE investigative testing, the chamber indoor cooling load is provided at a specified rate or value throughout testing instead of maintaining specific temperature conditions within the test chamber. In theory, this approach would be most representative of actual usage, where cooling loads are constant or variable due to external factors (*e.g.,* weather, door/window openings) and internal factors (*e.g.,* room occupants, appliance operation). Under a constant-cooling-load or dynamic-cooling-load test, a room AC with a single-speed compressor would cycle the compressor as the setpoint is reached, thereby introducing efficiency losses, whereas a variable-speed compressor could maintain constant operation at reduced speeds to match the cooling load with no cycling losses. As explained below, DOE explored this approach but is not proposing it because an increased test burden and reduced repeatability and reproducibility outweigh potential benefits.

DOE investigated the status of test data and uniform procedures to test with a specified constant or dynamic cooling load but found no widely adopted and industry-accepted test procedure for room ACs or other AC

[36] This understanding is based on discussion in the June 2010 Room AC Test Procedure Supplemental Notice of Proposed Rulemaking and comments from the California IOUs discussed above. 75 FR 37633–37634 (June 29, 2010). (California IOUs, No. 5 at p. 2)

products that uses a constant-cooling-load or dynamic-cooling-load test. DOE is aware of investigative efforts to test central ACs under varying cooling load conditions, but those have yielded only preliminary results which did not involve room ACs and did not provide sufficient evidence to show that a constant or dynamic load test would be repeatable and reproducible and not overly burdensome to conduct.[37] [38]

Due to the limited data available regarding constant-cooling-load testing, DOE conducted investigative testing to better understand the benefits and potential challenges associated with a constant-cooling-load test for room ACs. These tests were conducted using a variable-speed room AC rated at 18,000 Btu/h and a conventional single-speed room AC rated at 12,100 Btu/h. The single-speed room AC was selected because it was the louvered unit in the test sample closest in capacity to the variable-speed unit. DOE installed each room AC in a calorimeter test chamber, set the unit thermostat to 80 °F to match the indoor temperature specified in the appendix F test procedures, and then applied a fixed cooling load to the indoor room that was below the nominal rated cooling capacity of the test unit. The calorimeter chamber was configured to permit the indoor chamber temperature to vary, thereby allowing the test unit to eventually reach its thermostat set point and to adjust its cooling in response to the cooling load demands on the indoor room, as opposed to the constant-temperature test, which results in unvarying cooling operation. Table III–8 shows the results of these tests. All percentages are displayed are relative to full-cooling-load values measured during constant-temperature tests.

TABLE III–8—FIXED COOLING-LOAD-BASED TEST SINGLE-SPEED ROOM AIR CONDITIONER

| Outdoor test condition (°F dry-bulb) | Chamber-imposed cooling load (%) | Compressor on time (%) | Percent of full-load power (%) | EER (Btu/Wh) | Percent of full-load EER (%) |
|---|---|---|---|---|---|
| 95 | 49 | 53 | 62 | 9.2 | 79 |
| | 76 | 80 | 84 | 10.6 | 91 |
| | 78 | 82 | 86 | 10.6 | 91 |
| | 79 | 82 | 86 | 10.7 | 91 |
| | 80 | 84 | 88 | 10.6 | 91 |
| 82 | 46 | 48 | 58 | 11.8 | 79 |
| | 48 | 50 | 60 | 12.0 | 80 |
| | 67 | 69 | 77 | 13.1 | 88 |
| | 70 | 72 | 78 | 13.3 | 89 |

As discussed previously in section III.C of this document, and shown in Figure III–1, when tested under these same test conditions, the variable-speed room AC adjusted its compressor speed to match the applied cooling load, resulting in increased efficiency of between 9 percent and 25 percent at decreased cooling loads of 85 percent and 45 percent of the full-load cooling capacity, respectively, compared to the tested cooling capacity of the variable-speed room AC under the appendix F test procedure.

When tested according to the same constant-cooling-load test, the single-speed unit operated continuously until the unit thermostat setpoint was satisfied, at which time the unit cycled off the compressor. When the chamber temperature rose above the thermostat setpoint, the single-speed room AC activated the compressor. This off-and-on compressor cycling process continued throughout the rating test period. As shown in Table III–8, the fractional time the compressor was on (''compressor on time'') for a single compressor cycle during the test ranged from 84 percent to 48 percent as the cooling load decreased from 80 percent to 46 percent, respectively, of the tested cooling capacity. DOE also observed during testing that the total compressor cycle time (*i.e.,* the sum of a single period of compressor on time and compressor off time) decreased as cooling loads reduced, resulting in more frequent cycling and subsequent increased cycling losses.

As shown in Table III–8, DOE observed that the single-speed room AC was able to provide cooling that closely matched the chamber-imposed cooling load by cycling the compressor (*i.e.,* the percentage of compressor on time approximated the cooling load percentage). However, the single-speed room AC average input power during those same tests did not decrease at the same rate as the cooling capacity, which was indicative of the fan or blower remaining on when the compressor cycled off, as well as the significant additional power necessary to start up the compressor at the beginning of each compressor on cycle (*i.e.,* the percent of full-load power consumption during the same test was consistently higher than the cooling load percentage, as shown in Table III–8). As a result of the disproportionate cooling capacity and power decreases at reduced cooling loads, the overall efficiency of a single-speed room AC in terms of EER at reduced cooling loads decreased by up to 20 percent at a reduced load of about 50 percent of the full-load cooling capacity, as shown in Table III–8.[39] The overall efficiency of the variable-speed room AC in terms of EER increased by about 24 percent under similar reduced load conditions, as shown in Figure III–1.

Constant-cooling load tests have initially confirmed behavior that would be expected of room ACs in the field under conditions associated with partial loads (*i.e.,* lower outdoor temperatures at which the cooling load is typically smaller). During the constant-cooling-load test, single-speed room ACs cycle in proportion to the cooling load, and variable-speed room ACs adjust the compressor speed to match the measured cooling load in the room. Therefore, DOE would expect that

[37] The Canadian Standards Association has conducted dynamic-load testing for heat pumps. A summary is available at *http://neep.org/sites/default/files/NEEPCSAHarley2017-06-28.pdf.*

[38] Researchers at the University of Tokyo investigated the operation of split-type ACs under constant-load conditions in 2012. *https://docs.lib.purdue.edu/cgi/viewcontent.cgi?referer=&httpsredir=1article=2335context=iracc.*

[39] EER, is defined as the ratio of cooling capacity to unit power, in contrast to CEER, which additionally includes inactive mode or off mode power. Because the investigative testing did not include inactive mode or off mode testing, the investigative testing results are reported in EER.

cycling losses decrease the efficiency of single-speed room ACs at lower outdoor temperature conditions, an effect which variable-speed room ACs avoid. However, DOE contends that load-based tests, for reasons presented below, are currently not feasible for room ACs.

DOE is concerned that the constant-cooling-load test would reduce repeatability and reproducibility. Based on investigative testing, DOE found that conducting a constant-cooling-load test in an ANSI/ASHRAE Standard 16–2009-compliant calorimeter test chamber would impact repeatability and reproducibility. Table III–9 shows the results of indoor wet-bulb temperatures for the cooling-load-based tests conducted by DOE.

TABLE III–9—INDOOR WET-BULB TEMPERATURES FOR COOLING-LOAD-BASED TESTS

| Tested unit | Outdoor test condition (°F dry-bulb) | Cooling load (%) | Average indoor temperature (°F wet-bulb) | Difference from rating condition (°F wet-bulb) |
|---|---|---|---|---|
| Single-Speed | 95 | 49 | 67.6 | 0.6 |
| | ..... | 76 | 67.2 | 0.2 |
| | ..... | 78 | 67.0 | 0.0 |
| | ..... | 79 | 67.1 | 0.1 |
| | ..... | 80 | 67.1 | −0.1 |
| | 82 | 46 | 67.5 | 0.1 |
| | ..... | 48 | 66.5 | 0.5 |
| | ..... | 67 | 66.8 | −0.5 |
| | ..... | 70 | 67.1 | −0.2 |
| | *Average* | | *67.1* | *0.1* |
| Variable-Speed | 95 | 49 | 67.9 | 0.9 |
| | ..... | 73 | 68.0 | 1.0 |
| | ..... | 74 | 67.0 | 0.0 |
| | ..... | 85 | 67.0 | 0.0 |
| | ..... | 86 | 67.0 | 0.0 |
| | 87 | 45 | 67.0 | 0.0 |
| | ..... | 46 | 67.0 | 0.0 |
| | ..... | 63 | 67.0 | 0.0 |
| | ..... | 64 | 67.0 | 0.0 |
| | ..... | 85 | 67.0 | 0.0 |
| | *Average* | | *67.2* | *0.2* |

As shown in Table III–9, at cooling loads less than 75 percent of the tested unit cooling capacity, the indoor wet-bulb temperature variation sometimes exceeded the 0.3 °F arithmetic average tolerance required by ANSI/ASHRAE Standard 16–2009. DOE believes this is because the test chamber lacks a dehumidifier and instead relies on the test unit to remove moisture from the indoor chamber and assist in maintaining the wet-bulb temperature. The single-speed and variable-speed room ACs were unable to remove sufficient water vapor from the indoor-side chamber while cycling on and off or while operating at reduced compressor speed, respectively, causing the indoor chamber wet-bulb temperature to vary from 67 °F up to 0.6 °F for the single-speed unit, and up to 1.0 °F for the variable-speed unit.

Also, because the chamber used for testing was not designed to accommodate constant-cooling-load testing, the chamber controls were not capable of automatically achieving a specific cooling load condition. Instead, an iterative process was necessary to manually program and adjust the heating, cooling, and humidification inputs to the room to achieve the desired cooling load. This difficulty in automatically achieving specific loading conditions contributed significant increased testing time and test burden arising from the need to ensure uniform test chamber dimensions. In addition, the chamber size and particular conditioning equipment may affect the rate at which the indoor chamber temperature and relative humidity decrease in response to the room AC operation, or increase after a single-speed unit cycles off, thus affecting cycle time and frequency, which in turn impact cycling losses and measured performance.

DOE notes that constant-cooling-load tests may not be reproducible because ANSI/ASHRAE Standard 16 does not specify chamber dimensions and reconditioning equipment characteristics which affect heat transfer capabilities within the chamber, and thus they likely are not uniform across the industry. DOE expects that cooling-load-based test reproducibility could increase with test chamber modifications to improve cooling load-setting controls, standardizing or normalizing for test chamber size, and adding a dehumidifier to the indoor chamber, although these would place some additional test burden on manufacturers. Furthermore, because existing calorimeter chambers rely on steady-state operation to ensure accuracy and precision, dynamic-cooling-load testing in a calorimeter test chamber would require extraordinarily slow cooling load changes, which DOE estimates would be on the order of about one percent of the tested unit cooling capacity every two hours to maintain chamber stability, requiring an impractically long test to measure a full range of cooling load conditions (*e.g.,* it would require an estimated 86 hours to reduce the cooling load from 100 percent to 57 percent of full load to reach the expected cooling load at an outdoor test condition of 82 °F, as discussed in section III.D of this document, compared to the 2 hours typically required to conduct the current test procedure). Because of the

current lack of industry consensus on a constant-cooling-load or dynamic-cooling-load test procedure and the uncertainty regarding the repeatability of such tests, DOE judges that the potential benefits of constant-cooling-load or dynamic-cooling-load tests do not justify the increase in test burden in the form of test time and changes to test equipment. For these reasons, DOE is not proposing a constant-cooling-load or dynamic-cooling-load test for room ACs at this time.

f. Power Factor

In response to the June 2015 RFI, the California IOUs suggested that DOE should identify the power factor [40] at each operating voltage, provided that the market size for multiple-voltage units warrants that kind of coverage. (California IOUs, June 2015 RFI, No. 8 at p. 4) DOE measured power factor for a sample of 23 room ACs of varying product classes, capacities, and efficiencies and found that power factor results ranged from 0.93 to 0.99, with an average power factor of 0.97. Because the range of power factors was small and all measurements were close to a value of 1, DOE's testing suggests that there is no significant difference between the actual power drawn by a room AC and the apparent power supplied to the unit. Based on this, DOE expects that the metrics proposed in this document accurately described the power consumption of a room AC and therefore, the additional burden of measuring and reporting the power factor would outweigh any benefits this information would provide. Therefore, DOE does not propose to establish requirements for measuring and reporting the power factor for room ACs.

DOE seeks comment on the proposal to not establish requirements for measuring and reporting the power factor for room ACs.

2. Heating Mode

In the June 2015 RFI, DOE requested comment on appropriate test methods, industry test standards, and temperature conditions for measuring room AC reverse-cycle heating performance. DOE also requested information on the burdens associated with testing heating performance and whether they would disproportionately impact certain businesses. 80 FR 34843, 34847–34848.

The California IOUs supported measuring room AC heating mode performance in the DOE test procedure, but noted that with a combined performance metric, consumers would be unable to determine performance in individual active modes. According to the California IOUs, consumers could thus be confused when comparing units with and without heating, and might incorrectly assume that a high CEER necessarily represents efficient performance in both cooling and heating modes. The California IOUs also suggested that a combined efficiency metric could allow manufacturers to improve efficiency in heating mode while maintaining or even reducing cooling mode efficiency. Therefore, the California IOUs suggested that DOE implement separate cooling mode and heating mode metrics. (California IOUs, June 2015 RFI, No. 8 at pp. 2–3)

AHAM asserted that a heating mode test method is not necessary for room ACs, and that DOE should not adopt any metric for heating, whether separate or combined with cooling mode performance. AHAM stated that there is a trade-off between cooling and heating performance, so it would be difficult to optimize performance for both modes. Therefore, AHAM believes that including heating performance in the efficiency metric could increase prices while reducing product availability and consumer utility. AHAM also commented that a CEER metric that combines cooling and heating would confuse consumers, limit comparisons between room ACs with only cooling and those with both heating and cooling, and would diverge from the approach adopted for similar products. (AHAM, June 2015 RFI, No. 5 at pp. 3–4; AHAM, No. 3 at p. 7)

DOE agrees that combining cooling mode and heating mode performance into a single metric may limit a consumer's ability to recognize the mode-specific performance and compare performance with room ACs that only provide cooling. DOE also recognizes that a combined metric may lead to a reduction in cooling mode efficiency, if heating mode efficiency increases but the overall metric remains the same. DOE considered the approach taken for similar products and notes that PTACs and central ACs have separate metrics for heating and cooling performance while the test procedure for portable ACs does not consider heating performance. Further, DOE is not aware of data suggesting that heating mode is a significant operating mode for room ACs. Based on the lack of data of room ACs used for heating, and given the potential concerns raised by commenters, DOE is not proposing a test procedure to measure room AC heating mode in the room AC test procedure at this time.

DOE requests comment on the proposal not to establish a heating mode test procedure for room ACs at this time.

3. Off-Cycle Mode

Single-speed room ACs typically operate with a compressor on-off control strategy, where the compressor runs until the room temperature drops below a consumer-determined setpoint, then ceases to operate (*i.e.,* the unit operates in off-cycle mode [41]) until the room temperature rises above the setpoint, at which time the compressor starts again. The points at which the compressor stops and restarts depend on the setpoint temperature defined by the user and the deadband [42] programmed by the manufacturer. During the period in which the compressor remains off (*i.e.,* off-cycle mode), the fan may operate in different ways depending on manufacturer implementation: (1) The fan ceases operation entirely; (2) the fan continues to operate for a short period of time after the setpoint is reached and then stops until the compressor is reactivated; (3) the fan continues to operate continuously for a short period of time, after which it cycles on and off periodically until the compressor is reactivated; or (4) the fan continues to operate continuously until the compressor is reactivated.[43]

In the June 2015 RFI, DOE requested comment on the merits and limitations of including a requirement to measure off-cycle mode in the room AC test procedure. 80 FR 34843, 34846 (June 18, 2015). AHAM commented that DOE had previously concluded in a test procedure supplemental notice of proposed rulemaking (SNOPR) published for room ACs on June 29, 2010 (hereafter the ''June 2010 SNOPR''), that the benefit of incorporating the energy use of the off-cycle mode into the overall energy efficiency metric is outweighed by the additional test burden for manufacturers. 75 FR 37954, 37604. AHAM asserted that nothing has changed since those determinations that

[40] The power factor of an alternating current electrical power system is defined as the ratio of the real power flowing to the load to the apparent power in the circuit. A load with a low power factor draws more electrical current than a load with a high power factor for the same amount of useful power transferred. The higher currents associated with low power factor increase the amount of energy lost in the electricity distribution system.

[41] ''Off-cycle mode'' is distinct from ''off mode,'' in which a room AC not only ceases compressor and fan operation but also and may remain in that state for an indefinite time, not subject to restart by thermostat or temperature sensor signal.

[42] The term ''deadband'' refers to the range of ambient air temperatures around the setpoint for which the compressor remains off, and above which cooling mode is triggered on.

[43] Unlike air circulation mode, off-cycle mode is not user-initiated and only occurs when the ambient temperature has satisfied the setpoint.

would justify changing them. (AHAM, June 2015 RFI, No. 5 at pp. 2–3)

In the June 2010 SNOPR, DOE considered a definition for off-cycle mode that it proposed in a NOPR published in the **Federal Register** on December 9, 2008 (73 FR 74639), namely that off-cycle mode is a standby mode in which a room AC: (1) Has cycled off its main function by thermostat or temperature sensor, (2) does not have its fan or blower operating, and (3) will reactivate the main function according to the thermostat or temperature sensor signal. DOE notes that the 2010 off-cycle mode definition proposal only addressed a low-power state, excluding the possibility of fan or blower operation. By excluding the periods of fan operation from off-cycle mode, the definition for off-cycle mode considered in the June 2010 SNOPR would not have accounted for potentially significant room AC energy consumption. Unlike that definition, off-cycle mode as considered in this NOPR could include periods of potentially significant fan or blower energy use.

AHAM also noted DOE's conclusion in the January 2011 Final Rule that off-cycle mode does not persist for an indefinite time and therefore would not be considered a standby mode. (AHAM, June 2015 RFI, No. 5 at pp. 2–3; AHAM, No. 3 at p. 6) DOE agrees that, because off-cycle mode is terminated when the compressor reactivates, it would not be classified as a standby mode even if no fan or blower operation occurs. Regardless, such classification would not preclude any determination as to whether off-cycle mode should be incorporated in the energy efficiency metric.

In response to the August 2017 RFI, AHAM stated that the room AC industry recently adjusted to the CEER metric that was implemented in June 1, 2014, and that the metric has yet to be included on the EnergyGuide label. Therefore, AHAM suggested that including off-cycle mode in the room AC test procedure would prematurely adjust the performance metric, resulting in another burdensome redesign and testing process and potentially causing confusion with the test procedure. (AHAM, No. 3 at p. 6)

Friedrich also opposed including off-cycle mode testing for room ACs, stating that the portable AC off-cycle mode test requires an additional 2 hours in the test chamber after the cooling mode test, which is not an efficient use of test chamber time and which delays the manufacturer test and development timeline. (Friedrich, No. 2 at p. 4) DOE agrees that including an off-cycle mode test for room ACs would likely increase testing by 2 hours, in addition to a short period to adjust the test unit control settings.

The California IOUs noted that, in a previous test procedure rulemaking for room ACs, DOE discussed, but did not describe, a test procedure to measure fan-only energy use, and requested clarification regarding how off-cycle mode would address fan energy consumption. The California IOUs cited a Lawrence Berkeley National Laboratory study, which found that portable ACs consume 102 W when only operating the fan,[44] and suggested that room AC fan-only operation may similarly consume a significant amount of power and thus should be captured in the room AC test procedure. (California IOUs, No. 5 at p. 1) The Joint Advocates supported measuring off-cycle mode power consumption in the room AC test procedure, stating that it would provide better representation of actual use and efficiency, more information to consumers, and encourage manufactures to introduce more efficient fans and fan motors. The Joint Advocates commented that capturing fan operation outside of cooling mode would be consistent with the test procedures for portable ACs, dehumidifiers, and dishwashers. (Joint Advocates, No. 6 at pp. 3–4)

To investigate the merits of including off-cycle mode in the DOE test procedure, DOE conducted investigative testing of off-cycle mode for a sample of 27 room ACs.[45] The results of the testing are presented in Table III–10.

TABLE III–10—ROOM AC OFF-CYCLE MODE TESTING

| Unit No. | Fan operation scheme in off-cycle mode | Off-cycle average power (W) | Average power for fan operating scheme (W) |
|---|---|---|---|
| OC–1 | Continuous | 253.3 | 270.1 |
| OC–2 | Continuous | 286.9 | |
| OC–3 | Cyclical—Indefinite | 17.0 | 10.7 |
| OC–4 | Cyclical—Indefinite | 2.2 | |
| OC–5 | Cyclical—Indefinite | 15.9 | |
| OC–6 | Cyclical—Indefinite | 15.3 | |
| OC–7 | Cyclical—Indefinite | 22.3 | |
| OC–8 | Cyclical—Indefinite | 20.2 | |
| OC–9 | Cyclical—Indefinite | 5.3 | |
| OC–10 | Cyclical—Indefinite | 8.6 | |
| OC–11 | Cyclical—Indefinite | 7.8 | |
| OC–12 | Cyclical—Indefinite | 9.9 | |
| OC–13 | Cyclical—Indefinite | 4.8 | |
| OC–14 | Cyclical—Indefinite | 5.3 | |
| OC–15 | Cyclical—Indefinite | 6.7 | |
| OC–16 | Cyclical—Indefinite | 7.0 | |
| OC–17 | Cyclical—Indefinite | 22.6 | |
| OC–18 | Cyclical—Indefinite | 4.8 | |
| OC–19 | Cyclical—Indefinite | 11.7 | |
| OC–20 | Cyclical—Indefinite | 7.0 | |
| OC–21 | Cyclical—Indefinite | 3.8 | |
| OC–22 | Cyclical—Indefinite | 15.3 | |

[44] Burke, Thomas et al. ''Using Field-Metered Data to Quantify Annual Energy Use of Portable Air Conditioners'' Environmental Energy Technologies Division Lawrence Berkeley National Laboratory. December 2014.

[45] Room AC off-cycle mode investigative testing was consistent with the portable AC off-cycle mode test methodology.

TABLE III–10—ROOM AC OFF-CYCLE MODE TESTING—Continued

| Unit No. | Fan operation scheme in off-cycle mode | Off-cycle average power (W) | Average power for fan operating scheme (W) |
|---|---|---|---|
| OC–23 | Cyclical—Limited | 3.5 | 2.7 |
| OC–24 | Cyclical—Limited | 2.6 | |
| OC–25 | Cyclical—Limited | 2.5 | |
| OC–26 | Cyclical—Limited | 2.2 | |
| OC–27 | No Fan Operation | 1.8 | 1.8 |

As shown in Table III–10, two of the units operated the fan continuously in off-cycle mode and consumed 270.1 W on average. Of the remaining 25, one did not operate the fan at all during off-cycle mode and consumed 1.8 W; four disabled the fan after a few fan cycles (shown as ''cyclical–limited'') and consumed 2.7 W on average; and the remaining 20 units continued cycling the fan throughout the test period (shown as ''''cyclical–indefinite''), 10.7 W on average. The cyclical fan behavior that DOE observed was generally consistent with the ENERGY STAR V4.1 specification, which as discussed in section III.C.3 of this document, requires that all ENERGY STAR-certified room ACs ship with an energy saver mode enabled by default that minimizes energy consumption by limiting fan operation to: (1) While the compressor is operating (*i.e.,* cooling mode); (2) a period not exceeding 5 minutes after the compressor is switched off (*i.e.,* following cooling mode and prior to off-cycle mode); and (3) up to 17 percent of the total compressor off cycle time following the initial 5-minute period (*i.e.,* off-cycle mode), equivalent to 1 minute of fan-on time for every 5 minutes of fan-off time.

As discussed in a NOPR for the portable AC test procedure published on February 25, 2015, DOE tentatively determined that the benefits of measuring off-cycle mode power for portable ACs outweighed the additional test burden because all models tested from a market-representative sample operated the fan continuously in off-cycle mode with an average off-cycle mode power of 93 W. 80 FR 10211, 10231. However, based on the results described above, which indicate relatively low (*i.e.,* approximately 10 percent or less) average power use in off-cycle mode compared to the average power used in cooling mode, DOE has tentatively determined that the additional 2-hour test burden that would be required would outweigh the benefits of measuring off-cycle mode power for room ACs. Therefore, DOE is not proposing to define off-cycle mode or establish means for measuring off-cycle mode average power for room ACs in appendix F.

DOE requests comment on the proposal to not establish a definition or test procedure for off-cycle mode.

*F. Standby Modes and Off Mode*

Section 1.7 of appendix F defines standby mode as any mode where a room AC is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; or (b) continuous functions, including information or status displays (including clocks) or sensor-based functions. Section 1.5 of appendix F defines inactive mode as a mode that facilitates the activation of active mode by remote switch (including by remote control) or internal sensor, or provides continuous status display. Section 1.6 of appendix F defines off mode as a mode distinct from inactive mode in which a room AC is connected to a mains power source and is not providing any active or standby mode function and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

1. Referenced Standby Mode and Off Mode Test Standard

In the January 2011 Final Rule, DOE amended the room AC test procedure by incorporating provisions from IEC Standard 62301 First Edition for measuring standby mode and off mode power. 76 FR 971, 979–980 (Jan. 6, 2011). At that time, DOE reviewed the IEC Standard 62301 First Edition and concluded that it would generally apply to room ACs, with some clarifications, including allowance for testing standby mode and off mode in either the test chamber used for cooling mode testing, or in a separate test room that meets the specified standby mode and off mode test conditions. 76 FR 971, 986.

On January 27, 2011, IEC published IEC Standard 62301 Second Edition, an internationally accepted test procedure for measuring standby power in residential appliances, which included various clarifications to IEC Standard 62301 First Edition. Provisions from IEC Standard 62301 Second Edition are currently referenced in DOE test procedures for multiple consumer products for which standby mode and off mode energy use are measured (*e.g.,* dehumidifiers, portable ACs, dishwashers, clothes washers, clothes dryers, conventional cooking products, microwave ovens).

Based on its previous determinations for similar consumer products, DOE expects that the use of IEC Standard 62301 Second Edition for measuring the standby mode and off mode energy use for room ACs would improve the accuracy and representativeness of the test measurements and would not be unduly burdensome, compared to IEC Standard 62301 First Edition. Accordingly, DOE proposes to incorporate by reference relevant paragraphs of IEC Standard 62301 Second Edition in appendix F in place of those from IEC Standard 62301 First Edition, as follows.

a. Power Measurement Uncertainty

Section 4.4 of IEC Standard 62301 Second Edition introduces a more comprehensive specification for power measurement accuracy, which depends on the crest factor [46] and power factor of the input power, and the resulting calculated maximum current ratio (MCR). DOE notes that the allowable uncertainty is the same or less stringent than the allowable uncertainty specified in the First Edition, depending on the value of MCR and the power level being measured. In a final rule published in the **Federal Register** on October 31,

[46] The crest factor is the measured peak current drawn by the product divided by the measured root mean square current drawn by the product.

2012 (hereafter the ''October 2012 Final Rule''), regarding test procedures for consumer dishwashers, dehumidifiers, and conventional cooking products, DOE determined that this change in the allowable uncertainty would maintain sufficient accuracy of measurements under a full range of possible measured power levels while minimizing test burden associated with high instrumentation accuracy. 77 FR 65942, 65948. Because DOE understands that the standby power characteristics of room ACs are similar to those of dishwashers, dehumidifiers, and conventional cooking products and were tested using the same standard until the publication of the October 2012 Final Rule, DOE relies on that analysis and adopts it for room ACs. Therefore, DOE proposes to reference the power equipment specifications from Section 4.4 of IEC Standard 62301 Second Edition for determining standby mode and off mode power in appendix F.

DOE requests comment on the proposal to reference the power equipment specifications from Section 4.4 of IEC Standard 62301 Second Edition for determining standby mode and off mode power in appendix F.

b. Power Consumption Measurement Procedure

Section 4.2 of appendix F requires measuring standby mode and off mode power according to Section 5, Paragraph 5.3 of IEC Standard 62301 First Edition, as modified by Appendix F.[47] Paragraph 5.3 specifies a direct meter reading method. If the power varies over a cycle, as described in Section 5, Paragraph 5.3.2 of IEC Standard 62301 First Edition, testing must follow the average power approach for power that varies over a cycle in Section 5, Paragraph 5.3.2(a). This approach requires a measurement period long enough to include one or more complete cycles, and then calculating the average power over the measurement period is calculated.

IEC Standard 62301 Second Edition defines three different mode stability types (stable, cyclic, and irregular) and provides three methods to measure power consumption of an appliance: (1) Sampling, (2) average reading, and (3) direct meter reading. The direct meter reading method and average reading method are similar to the options in IEC Standard 62301 First Edition for stable and non-stable (cyclic or irregular) standby modes, respectively, that are currently referenced in the room AC test procedure. The following paragraphs describe the three methods in IEC Standard 62301 Second Edition to determine power consumption.

(1) The sampling method requires different approaches for stable, cyclic, and irregular power consumption modes. For stable modes, it requires a test period of at least 15 minutes, with power data recorded at least once every second. The first third of the total period is discarded, and the other two-thirds of the period are used to determine stability. Stability is achieved when the slope of a linear regression of the data is within tolerances listed in Section 5.3.2 of IEC Standard 62301 Second Edition. Once the stability criteria are satisfied, the result is the average power consumed during the latter two thirds of the total test period. For cyclic modes, the method requires two test periods, each not less than 10 minutes, and not less than two cycles each. Stability for a cyclic mode is achieved when the power difference between the two test periods is within tolerance. The representative average power is the average power consumed over both comparison periods. For irregular modes, or cyclic modes where the cycles never meet stability criteria, IEC Standard 62301 Second Edition requires collecting data sufficient to characterize the power consumption of the mode and recommends measuring a minimum of ten cycles.

(2) The direct meter reading method may only be used for stable modes, and requires a 30-minute stabilization period, which is extended if stability cannot be achieved. Once stability has been achieved, two instantaneous measurements are taken not less than 10 minutes apart. The average of these two readings is the result, as long as the two measurements agree within the tolerances specified in Section 5.3.4 of IEC Standard 62301 Second Edition. If the measurements do not agree sufficiently or stability cannot be achieved, testing must follow a different method.

(3) The average reading method may only be used for stable modes. This is a change from the first edition of IEC Standard 62301, which also allowed use for non-stable modes. After a 30-minute stabilization period, average power measurements are taken over two equal comparison periods, each not less than 10 minutes in duration. If the two measurements agree within the tolerances specified in Section 5.3.3 of IEC Standard 62301 Second Edition, the result is determined by the average of readings from both comparison periods. If the measurements do not agree within the specified tolerances or stability cannot be achieved, testing must follow the sampling method.

According to IEC Standard 62301 Second Edition, the sampling method is preferred for all cases and is specified for all units in which the power varies over the mode, or the mode to be measured is of limited duration. Thus, IEC Standard 62301 Second Edition specifies the sampling method to be used for modes when the power is cyclic or irregular and suggests that it is the fastest test method for stable modes.

DOE expects that adopting a single test method from IEC Standard 62301 Second Edition would ensure that the standby power test procedure for room ACs is uniform and repeatable because allowing multiple test methods may affect reproducibility if systematic differences exist between the test methods. DOE does not expect that proposing the sampling method for all standby mode and off mode testing would increase test burden, because power meters that can measure, store, and output readings at the required proposed sampling rate and accuracy for the sampling method are already widely used by test laboratories. DOE also does not anticipate that the power consumption measured with the sampling method would substantively vary from that measured with the direct meter or average reading methods. DOE notes that other covered products, such as dehumidifiers and portable ACs, require using the sampling method to measure standby mode and off mode average power. For these reasons, DOE proposes to adopt the sampling method from Section 5.3.2 of IEC Standard 62301 Second Edition to determine standby mode and off mode average power in appendix F.

DOE requests comment on the proposal to adopt and reference the sampling method from Section 5.3.2 of IEC Standard 62301 Second Edition to determine standby mode and off mode average power in appendix F.

*G. Network Functionality*

Network functionality on room ACs may enable functions such as communicating with the network to provide real-time information on the temperature conditions in the room or receiving commands via a remote user interface such as a smartphone. DOE has observed that network features on room ACs are designed to operate in the background while the room AC performs other functions. These network functions may operate continuously during all operating modes, and therefore may impact the

[47] Appendix F provides additional direction requiring the product to stabilize for 5 to 10 minutes and using an energy use measurement period of 5 minutes.

power consumption in all operating modes.

In the June 2010 SNOPR, DOE considered whether it should adopt amendments to the room AC test procedure to measure energy consumption when network functionality is enabled. DOE noted that a draft version of IEC Standard 62301 Second Edition described network mode as a mode where the energy using product is connected to a main power source and at least one network function is activated (such as reactivation via network command or network integrity communication) but where the primary function is not active. 75 FR 37594, 37605 (June 29, 2010). Due to the lack of information about room ACs with network functionality, in the January 2011 Final Rule, DOE did not adopt provisions to account for energy consumption associated with network functionality. 76 FR 971, 983–984 (Jan. 6, 2011).

DOE investigated the network-enabled units currently available in the market to assess whether an amendment to room AC test procedure to measure network functionality would be appropriate. DOE did not find network-capabilities to be common at this time and found that to the extent offered, in most cases, such units are sold network-ready or with the necessary hardware included. However, at least one manufacturer does not include the necessary hardware with the original purchase, instead selling a connectivity module separately. Based on these findings, and as discussed further in section III.H of this document, DOE is not proposing provisions to specifically measure and account for energy consumption associated with network functionality. However, to provide further direction and simplify the test setup and configuration settings, DOE proposes to specify in section 3.1.4 of appendix F that units with network capabilities must be tested with the network settings disabled, and that those network settings remain disabled for all tested operating modes (*i.e.,* cooling mode, standby mode, and off mode).

DOE also 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. In this NOPR, DOE seeks comment on the same issues presented in the RFI as they may be applicable to room ACs.

DOE requests comment on the proposal to specify that all network or connectivity settings must be disabled during testing.

*H. Connected Test Procedure*

ENERGY STAR V4.1 specifies optional criteria for room ACs designed to provide additional functionality to consumers, such as alerts and messages, remote control and energy information, as well as demand response (DR) capabilities, which support the inclusion of room ACs in smart grid applications (hereafter ''connected room ACs''). These capabilities are all considered network functionality, as they require the room AC maintain communication continuously or intermittently with a server; however, DR functionality is a unique subset that enables smart grid communication and active modified operation in response to DR signals from an electric utility.

In the June 2015 RFI, DOE noted that the ENERGY STAR V4.0 criteria [48] may increase the market penetration of connected room ACs and that the operation of connected functions may require a significant amount of energy. Thus, DOE requested input on whether the test procedure should be amended to account for the energy consumed while the room AC performs connected functions. Specifically, DOE requested information on the connected features available in the market and the energy consumption of those features. Furthermore, DOE requested information on the current and anticipated market penetration of connected room ACs. 80 FR 34843, 34848 (June 18, 2015).

The Joint Advocates stated that there were already seven ''connected'' models in the ENERGY STAR list of certified room ACs as of August 29, 2017, and as more are introduced into the market, there may be significant and continuous additional energy consumption due to the connected functionality operating in an ''always on'' standby mode. The Joint Advocates suggested that the test procedure for room ACs should capture any power consumption associated with connected features to encourage manufacturers to provide connected functionality with low power consumption. (Joint Advocates, No. 6 at p. 4) DOE reiterates its request for comment on network connectivity issues in light of the September 17, 2018 RFI.

The Joint Commenters and California IOUs encouraged DOE to consider amending the existing room AC test procedure to include the energy consumption of connected features for connected room ACs. These commenters expect that connected room ACs, which can support smart grid interconnection, would become more common with the publication of the ENERGY STAR V4.0. The California IOUs noted that room ACs typically operate during peak hours, so the connected functionalities are particularly beneficial to both utilities and consumers by reducing the overall load and providing better-informed user control. The California IOUs also stated that as the market continues to grow for these features, it is important to understand how to measure, capture, and monitor the energy consumption and energy reduction that results from implementing the connected features. The California IOUs urged DOE to include the connected functions in the test procedure if the energy impacts are significant. (Joint Commenters, June 2015 RFI, No. 7 at p. 2; California IOUs, June 2015 RFI, No. 8 at p. 4; California IOUs, No. 5 at p. 1)

AHAM stated that an ENERGY STAR test method to evaluate DR capabilities had not yet been published, and therefore the market penetration for connected room ACs was still minimal. AHAM also stated that connected products offer consumers and utilities a unique energy savings opportunity by improving grid energy efficiency and allowing for peak-load shifting and implementation of renewable power sources). Therefore, AHAM suggested that DOE should not revise the room AC test procedure to account for the energy consumption associated with connected functionality because that would negate the potential benefits these products provide. (AHAM, June 2015 RFI, No. 5 at pp. 4–5)

On June 7, 2017, DOE and EPA published the final ENERGY STAR Program Requirements Product Specification for Room Air Conditioners: Test Method to Validate Demand Response (hereafter the ''June 2017 ENERGY STAR Test Method''). This test method validates that a unit complies with ENERGY STAR's DR requirements, which are designed to reduce energy consumption upon receipt of a DR signal. However, DOE notes that the June 2017 ENERGY STAR Test Method does not measure the total energy consumption or average power

[48] The optional criteria for connected room air conditioners contained in ENERGY STAR V4.0 are identical to those contained in the currently applicable V4.1 version.

while a unit responds to a DR signal. Further, DOE notes that no connected room ACs are currently available on the market that comply with the full set of ENERGY STAR V4.1 connected criteria, and therefore, the energy consumption cannot be determined for a range of products and manufacturers. There is also little available information indicating the frequency of received DR signals that are specified in the ENERGY STAR connected criteria. As a result, it is not possible to determine annual energy use attributed to DR signals. Therefore, given the issues raised in the September 17, 2018 RFI and the lack of available connected room ACs on the market and lack of energy consumption and usage data regarding the DR signals, DOE does not propose to amend its room AC test procedure in this rulemaking to measure energy consumption while a connected room AC is responding to a DR signal.

DOE requests comment on the proposal not to amend the DOE test procedure for room ACs to include energy consumption while a connected room AC responds to a DR signal.

*I. Combined Energy Efficiency Ratio*

The current room AC energy efficiency metric, CEER, accounts for the cooling provided by the room AC in cooling mode as a function of the total energy consumption in cooling mode and inactive mode or off mode. In the June 2015 RFI, DOE requested comment on the merits and limitations of revising the room AC test procedure and efficiency metric to account for energy consumption in various modes, such as cooling mode, heating mode, off-cycle mode, inactive mode, and off mode. 80 FR 34843, 34846 (June 18, 2015).

AHAM opposed adding additional energy metrics for room ACs, noting that the industry recently implemented product redesigns adding standby and off mode energy consumption in the overall efficiency metric, in response to the CEER established in the January 2011 Final Rule. As previously discussed in section III.E.3 of this document for off-cycle mode specifically, AHAM suggested that an additional metric would require another burdensome redesign and any new mode definitions and metrics would complicate the test procedure and increase the test burden. (AHAM, June 2015 RFI, No. 5 at p. 2) As discussed in section III.E.2 and section III.E.3 of this document, respectively, DOE is not proposing a heating mode or off-cycle mode test in appendix F. Further, although DOE is proposing a new test procedure for variable-speed room ACs that requires testing at additional outdoor test conditions, the new variable-speed room AC test procedure calculations produce a CEER value comparable to the existing CEER metric for single-speed units. The new calculations would not change the procedure for single-speed units.

DOE requests comment on the proposal to maintain the current CEER calculations for single-speed room ACs.

*J. Certification and Verification Requirements*

In a direct final rule published on April 22, 2011 (hereafter the ''April 2011 Direct Final Rule''), DOE published amended energy conservation standards for room ACs, with a compliance date of June 1, 2014. 76 FR 22454. The amended standards reflect performance in standby mode or off mode, based on a new performance metric, CEER, expressed in Btu/Wh. However, the sampling plan and certification reporting requirements in 10 CFR 429.15(a)(2)(ii) and (b)(2) were not updated in the April 2011 Direct Final Rule. DOE proposes in this NOPR to update those requirements to conform to the current metric by requiring the reporting of the CEER metric and to remove references to the previous performance metric, EER. For variable-speed room ACs, DOE proposes to require the additional reporting of cooling capacity and electrical input power for each of the three additional test conditions as part of a supplemental PDF that would be referenced within the manufacturer's certification report.

Friedrich urged DOE to examine the enforcement procedure for room AC standards, noting that CEER measurements can differ by 2 to 3 percent from laboratory to laboratory, especially for units rated below 12,000 Btu/h. Friedrich expressed the view that the current enforcement methodology fails to account for this variation. (Friedrich, No. 2 at p. 7)

DOE appreciates the comment by Friedrich, although it is outside the scope of this rulemaking. DOE may consider this information in the future if DOE conducts a rulemaking that would address certification and enforcement procedures and encourages Friedrich to submit its comment in any such rulemaking.

*K. Reorganization of Calculations Currently in 10 CFR 430.23*

Currently, 10 CFR 430.23(f) contains instructions for determining a room AC's estimated annual operating cost, with calculations described for the average annual energy consumption, combined annual energy consumption, EER, and CEER.

DOE proposes to move the formula for a unit's CEER from 10 CFR 430.23(f) to appendix F, to mitigate potential confusion, harmonize with the approach used for other products, and improve the readability of the calculations currently in 10 CFR 430.23(f) and appendix F. Similarly, DOE proposes to remove the formulas for average annual energy consumption in cooling mode and combined annual energy consumption from 10 CFR 430.23(f) and instead add formulas for annual energy consumption for each operating mode in appendix F.

Because the EER performance metric is does not apply to either current or future manufacturing, DOE proposes removing the EER formula from 10 CFR 430.23(f), and also proposes to remove the formulas for overall annual energy consumption in that section (*i.e.,* a combined annual energy consumption as well as an average annual energy consumption). Instead, DOE proposes to update the estimated annual operating cost calculation in 10 CFR 430.23(f) to reference energy consumption values calculated in appendix F.

Finally, DOE proposes to include in 10 CFR 429.15(a)(3) through (5) and (b)(3) and 10 CFR 430.23(f) instructions to round cooling capacity to the nearest 100 Btu/h, electrical input power to the nearest 10 W, and CEER to the nearest 0.1 Btu/Wh, to provide consistency in room AC capacity, electrical input power, and efficiency representations.

DOE requests comment on the proposed rounding instructions in appendix F for cooling capacity, electrical input power, and CEER and to revise the estimated annual operating cost calculation to now reference the annual energy consumption for each operating mode as calculated in appendix F, as opposed to the annual energy consumption calculation currently located in 10 CFR 430.23.

*L. Test Procedure Costs, Harmonization, and Other Topics*

1. Test Procedure Costs and Impact

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. In this NOPR, DOE proposes to amend the existing test procedure for room ACs by (1) updating industry standard references to the current versions; (2) adopting procedures for variable-speed room ACs that reflect the relative efficiency gains compared to single-speed room ACs; (3) adopting new definitions consistent with the proposed amendments; and (4) providing specifications and minor corrections to improve the test procedure repeatability, reproducibility,

and overall readability. DOE has tentatively determined that these proposed amendments would not be unduly burdensome for manufacturers to conduct.

Based on review of the Compliance Certification Database in DOE's Compliance Certification Management System, DOE has identified 812 basic models of room ACs, representing 31 manufacturers.[49] However, this number likely is artificially high. DOE frequently finds that manufacturers fail to report a model as discontinued. DOE's analysis of this proposal indicates that, if finalized, the only cost savings or additional costs to manufacturers would be those already being incurred for variable-speed room ACs under the LG Waiver and Grant of Midea Interim Waiver.

a. Variable-Speed Test Impact

As discussed in section III.C.1 of this document, DOE proposes to add three additional cooling mode test conditions to the appendix F test procedure for variable-speed room ACs to better reflect the relative efficiency improvements of variable-speed ACs compared to single-speed room ACs. DOE estimates that the proposed amendments for variable-speed room AC would require a total of 14 hours of test chamber time, while the current test procedure requires approximately two hours of test chamber time. However, as discussed previously, all ten basic models (four from LG and six from Midea) currently on the market are subject to either the LG Waiver or the Grant of Midea Interim Waiver and are generally being tested consistent with the proposed amendments in this NOPR. 84 FR 20111 and 84 FR 68159. Therefore, the ten variable-speed room AC basic models identified by DOE would not need to be re-tested or re-certified if DOE adopts the amendments as proposed in this document. Although no other manufacturers are currently producing variable-speed room ACs that are sold in the United States, the additional testing time described above would be applicable to any entities that begin manufacturing a variable-speed room AC for introduction to the U.S. market.

DOE has tentatively concluded that the proposed test procedure in this NOPR would not add any industry test burden and that the minimal costs associated with the LG Waiver and Grant of Midea Interim Waiver test procedure are already being incurred.

DOE requests comment on the understanding of the estimated impact and associated costs to room AC manufacturers of the proposed amendment to test variable-speed room ACs.

b. Additional Amendments

DOE affirms that manufacturers of single-speed room ACs can rely on data generated under the current test procedure for single-speed room ACs should any of these additional proposed amendments be finalized. Therefore, the remainder of the amendments proposed in this NOPR for single-speed room ACs would not impact test costs.

2. Harmonization With Industry Standards

DOE is proposing that the test procedure for room ACs at appendix F incorporate by reference certain provisions of ANSI/AHAM RAC–1–2015 and ANSI/ASHRAE Standard 16–2016 for active mode testing conditions, methods, and calculations, and IEC Standard 62301 Second Edition for measuring standby and off mode power consumption.

DOE seeks comment on the degree to which the DOE test procedure should consider and be harmonized further with the most recent relevant industry standards for room ACs and whether any changes to the Federal test method would provide additional benefits to the public. DOE also requests comment on the benefits and burdens of, or any other comments regarding adopting any industry or voluntary consensus-based or other appropriate test procedure, without modification.

DOE notes that current industry test procedures, ANSI/AHAM RAC–1–2015 and ANSI/ASHRAE Standard 16–2016 do not include test procedures for variable-speed units, such as the multiple test conditions proposed in this NOPR. DOE requests comment on whether the industry is considering updating its standards for room AC testing to include provisions for testing variable-speed room ACs.

3. Other Test Procedure Topics

In addition to the issues identified earlier in this document, DOE welcomes comment on any other aspect of the existing test procedure for room ACs not already addressed by the specific areas identified in this document. DOE particularly seeks information that would improve the representativeness of the test procedure, as well as information that would help DOE create a procedure that would limit manufacturer test burden. Comments regarding repeatability and reproducibility are also welcome.

DOE also requests information that would help DOE create procedures that would limit manufacturer test burden through streamlining or simplifying testing requirements. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE must 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 regulations applicable to room ACs consistent with the requirements of EPCA.

*M. Compliance Date and Waivers*

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2)) If DOE were to publish an amended test procedure for room ACs, EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer would experience undue hardship in meeting the 180-day deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, a manufacturer must file a petition with DOE no later than 60 days before the end of the 180-day period and detail how the manufacturer will experience undue hardship. (*Id.*)

Upon the compliance date of an amended test procedure, if DOE issues such an amendment, any waivers that had been previously issued and are in effect that pertain to issues addressed by the amended test procedure terminate. 10 CFR 430.27(h)(2). Recipients of any such waivers would be required to test products subject to the waiver according to the amended test procedure as of the effective date of the amended test procedure. There is currently one waiver from the test procedure for room ACs for four variable-speed models manufactured by LG. In a decision and order published on May 8, 2019, DOE granted this waiver from DOE's room AC test procedure. 84 FR 20111. Additionally, there is one interim waiver from the room AC test procedure for six variable-speed models, manufactured by Midea, that DOE

[49] *https://www.regulations.doe.gov/certification-data/CCMS-4-Air_Conditioners_and_Heat_Pumps_-_Room_Air_Conditioners.html.* Accessed October 8th, 2018.

granted on December 13, 2019 (84 FR 68159) that would also terminate upon the compliance date of such an amended test procedure.

## IV. Procedural Issues and Regulatory Review

### *A. Review Under Executive Order 12866*

The Administrator of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that the proposed regulatory action is a significant regulatory action under section (3)(f) of Executive Order 12866. Accordingly, this action was reviewed by OIRA in the Office of Management and Budget (OMB).

### *B. Review Under Executive Orders 13771 and 13777*

On January 30, 2017, the President issued Executive Order (E.O.) 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' See 82 FR 9339 (Feb. 3, 2017). E.O. 13771 stated the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds, from both public and private sources. E.O. 13771 stated it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations.

Additionally, on February 24, 2017, the President issued E.O. 13777, ''Enforcing the Regulatory Reform Agenda.'' 82 FR 12285 (March 1, 2017). E.O. 13777 required the head of each agency designate an agency official as its Regulatory Reform Officer (RRO). Each RRO oversees the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. Further, E.O. 13777 requires the establishment of a regulatory task force at each agency. The regulatory task force is required to make recommendations to the agency head regarding the repeal, replacement, or modification of existing regulations, consistent with applicable law. At a minimum, each regulatory reform task force must attempt to identify regulations that:

(i) Eliminate jobs, or inhibit job creation;

(ii) Are outdated, unnecessary, or ineffective;

(iii) Impose costs that exceed benefits;

(iv) Create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;

(v) Are inconsistent with the requirements of Information Quality Act, or the guidance issued pursuant to that Act, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or

(vi) Derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

DOE initially concludes that this rulemaking is consistent with the directives set forth in these executive orders. This proposed rule would not yield any cost savings or additional costs to manufacturers other than those already being incurred for variable-speed room ACs under the LG Waiver and the Grant of Midea Interim Waiver.

### *C. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule prescribes amended test procedures to measure the energy consumption of room ACs in cooling mode, standby modes, and off mode. DOE tentatively concludes that this proposed rule would not have a significant impact on a substantial number of small entities, and the factual basis for this certification is set forth in the following paragraphs.

The Small Business Administration (SBA) considers a business entity to be small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS) and are available at *https://www.sba.gov/document/support--table-size-standards.* Room AC manufacturing is classified under NAICS 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' The SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

DOE used DOE's Compliance Certification Database [50] to create a list of companies that sell room ACs covered by this rulemaking in the United States. Additionally, DOE surveyed the AHAM member directory to identify manufacturers of room ACs. DOE then consulted other publicly available data, purchased company reports from vendors such as Dun and Bradstreet, and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a ''small business manufacturing facility'' and have their manufacturing facilities located within the United States. Based on this analysis, DOE is unable to identify any small businesses that currently manufacture room ACs in the United States.

Because DOE identified no small businesses that manufacture room ACs in the United States, DOE tentatively concludes that the impacts of the test procedure amendments proposed in this NOPR would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

DOE seeks comment on the finding that there are no small businesses that manufacture room ACs.

### *D. Review Under the Paperwork Reduction Act of 1995*

Manufacturers of room ACs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including room ACs. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is

[50] *https://www.regulations.doe.gov/certification-data.* Accessed October 5, 2018

subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

*E. Review Under the National Environmental Policy Act of 1969*

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (NEPA) and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, Appendix A5. DOE anticipates that this rulemaking qualifies for categorical exclusion A5 because it is an interpretive rulemaking that does not change the environmental effect of the rule and otherwise meets the requirements for application of a categorical exclusion. See 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

*F. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

*G. Review Under Executive Order 12988*

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

*H. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

*I. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*J. Review Under Executive Order 12630*

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*K. Review Under Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides

for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*L. Review Under Executive Order 13211*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of room ACs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

*M. Review Under Section 32 of the Federal Energy Administration Act of 1974*

Under section 301 of the Department of Energy Organization Act (Public Law 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the FTC concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedure for room ACs adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: ''Room Air Conditioners,'' ANSI/AHAM RAC–1–2015, ''Method of Testing for Rating Room Air Conditioners, Packaged Terminal Air Conditioners, and Packaged Terminal Heat Pumps for Cooling and Heating Capacity,'' ANSI/ASHRAE Standard 16–2016, and ''Household electrical appliances—Measurement of standby power,'' IEC 62301 Edition 2.0, 2011–01. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

*N. Description of Materials Incorporated by Reference*

In this NOPR, DOE proposes to incorporate by reference the test standard published by AHAM, titled ''Room Air Conditioners,'' ANSI/AHAM RAC–1–2015. ANSI/AHAM RAC–1–2015 is an industry-accepted test procedure that measures room AC performance in cooling mode, in addition to other modes. ANSI/AHAM RAC–1–2015 specifies testing conducted in accordance with other industry-accepted test procedures (already incorporated by reference) and determines energy efficiency metrics for various room AC operating modes. The proposed amendments in this NOPR include updating references to various sections in ANSI/AHAM RAC–1–2015 that address test setup, instrumentation, test conduct, calculations, and rounding. ANSI/AHAM RAC–1–2015 is reasonably available at *https://www.aham.org/ht/d/Store/.*

In this NOPR, DOE also proposes to incorporate by reference the test standard published by ASHRAE, titled ''Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners,'' ANSI/ASHRAE Standard 16–2016. ANSI/ASHRAE Standard 16–2016 is an industry-accepted test procedure that provides means for testing and determining the cooling and heating capacities of room ACs and packaged terminal air conditioners (PTACs), using either a calorimeter method or air-enthalpy method. The proposed amendments in this NOPR include updated general references to ANSI/ASHRAE Standard 16–2016, that address all areas of testing including installation, test setup, instrumentation, test conduct, data collection, and calculations. ANSI/ASHRAE Standard 16–2016 is reasonably available at *https://webstore.ansi.org/.*

In this NOPR, DOE also proposes to incorporate by reference several test standards published by ASHRAE: ''Standard Method for Temperature Measurement,'' ANSI/ASHRAE Standard 41.1–2013, ''Standard Methods for Air Velocity and Airflow Measurement,'' ANSI/ASHRAE Standard 41.2–1987 (RA 1992), ''Standard Methods for Pressure Measurement,'' ANSI/ASHRAE Standard 41.3–2014, ''Standard Methods for Humidity Measurement,'' ANSI/ASHRAE Standard 41.6–2014, and ''Standard Methods for Power Measurement,'' ANSI/ASHRAE Standard 41.11–2014. These standards are industry-accepted test procedures that prescribe methods and instruments for measuring temperature, air velocity, pressure, humidity, and power, respectively. These standards are cited by ANSI/ASHRAE Standard 16–2016, which this NOPR proposes to incorporate by reference. These standards are reasonably available at *https://webstore.ansi.org/.*

In this NOPR, DOE also proposes to incorporate by reference the test standard IEC 62301, titled ''Household electrical appliances—Measurement of standby power,'' (Edition 2.0, 2011–01) for appendix F. IEC 62301 is an industry-accepted test standard that sets a standardized method to measure the standby power of household and similar electrical appliances and is already incorporated by reference for a number of other DOE test procedures. IEC Standard 62301 Second Edition includes details regarding test set-up, test conditions, and stability requirements that are necessary to ensure consistent and repeatable standby and off-mode test results. IEC Standard 62301 Second Edition is reasonably available at *https://webstore.iec.ch/* and *http://www.webstore.ansi.org.* The proposed amendments in this NOPR include updating general references to IEC 62301 from the First Edition to the

Second Edition and adopting a new standby power test approach.

## V. Public Participation

### *A. Participation in the Webinar*

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar, then it will be cancelled.

Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/41.* Participants are responsible for ensuring their systems are compatible with the webinar software.

Additionally, you may request an in-person meeting to be held prior to the close of the request period provided in the **DATES** section of this document. Requests for an in-person meeting may be made by contacting Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *Appliance_Standards_Public_Meetings@ee.doe.gov.*

### *B. Submission of Comments*

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this proposed rule.

*Submitting comments via http://www.regulations.gov.* The *http://www.regulations.gov* web page will require 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 this instruction, 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 (hereafter 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, or mail.* Comments and documents submitted via email, hand delivery, or mail also will be posted *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 mail or hand delivery, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No 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 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 *RoomAC2017TP0012@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).

### *C. Issues on Which DOE Seeks Comment*

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) The proposed amendments to the room AC definition in 10 CFR 430.2. (See section III.A of this document)

(2) The proposed new beginning section to appendix F that would explicitly state the scope of coverage. (See section III.A of this document)

(3) The proposal to incorporate by reference ANSI/AHAM RAC–1–2015, and to adjust the section references in appendix F, to more narrowly refer to the cooling mode-specific sections and to update the section reference for measuring electrical power input. (See section III.B.1 of this document)

(4) The proposal to reference the relevant sections of ANSI/ASHRAE Standard 16–2016 in appendix F. (See section III.B.2 of this document)

(5) The proposal to incorporate the requirements of ANSI/ASHRAE Standard 16–2016 while

maintaining that an accuracy of ±0.5 percent of the quantity measured is applicable to all devices measuring electrical input for the room AC test procedure. (See section III.B.2 of this document)

(6) The proposal to incorporate ANSI/ASHRAE Standard 41.1–2013, ANSI/ASHRAE Standard 41.2–1987 (RA 1992), ANSI/ASHRAE Standard 41.3–2014, ANSI/ASHRAE Standard 41.6–2014, and ANSI/ASHRAE Standard 41.11–2014 in appendix F. (See section III.B.3 of this document)

(7) The proposal to adopt the additional test conditions from the LG Waiver test procedure for variable-speed room ACs. (See section III.C.2 of this document)

(8) The proposal to require fixing the compressor speed settings for variable-speed room ACs to full speed at the 95 °F and 92 °F test conditions, intermediate speed at the 87 °F test condition, and low speed at the 82 °F test condition. (See section III.C.3.a of this document)

(9) The proposal to require that manufacturers provide the third-party lab with the control settings required to achieve the fixed compressor speed for each test condition. (See section III.C.3.b of this document)

(10) The proposal to not address boost compressor speed performance and energy consumption in appendix F at this time. (See section III.C.3.c of this document)

(11) The proposal to use the capacity and electrical power adjustment factors of 0.0099 per °F and 0.0076 per °F, respectively. (See section III.C.4 of this document)

(12) The proposal to implement cycling loss factors consistent with AHRI Standard 210/240 to represent the expected performance of a theoretical comparable single-speed room AC at reduced outdoor temperature test conditions. (See section III.C.5 of this document)

(13) The proposed weighting factors associated with each of the outdoor test conditions. (See section III.C.6 of this document)

(14) The proposed calculations to determine a performance adjustment factor, which would credit the CEER of variable-speed room ACs to account for their efficiency improvements relative to a theoretical comparable single-speed room AC under varying test conditions. (See section III.C.7 of this document)

(15) The proposal not to allow for an optional alternative air-enthalpy test approach for room ACs. (See section III.C.8 and section III.E.1.c of this document)

(16) The proposal to include compressor frequencies and control settings as additional product-specific information for certifications involving variable-speed room ACs in 10 CFR 429.15. (See section III.C.9 and section III.J of this document)

(17) The proposal to calculate estimated annual operating cost for variable-speed room ACs using a weighted-average annual energy consumption based on the four cooling mode test conditions in newly added Table 1 of appendix F. (See section III.C.10 of this document)

(18) The proposal to report variable-speed room AC input power for certification purposes using the value measured at the 95 °F rating condition. (See section III.C.10 of this document)

(19) The proposal to add new definitions for cooling mode, cooling capacity, combined energy efficiency ratio, single-speed room air conditioner, variable-speed room air conditioner, variable-speed compressor, full compressor speed (full), intermediate compressor speed (intermediate), and low compressor speed (low) in appendix F. (See section III.D of this document)

(20) The proposal to specify in appendix F that room ACs designed for through-the-wall installation (*i.e.,* non-louvered room ACs) must be installed using a compatible wall sleeve (per manufacturer instructions), with the provided or manufacturer-required rear grille, and with the included trim frame and other manufacturer-provided installation materials. (See section III.E.1.d of this document)

(21) The proposal, consistent with ANSI/ASHRAE Standard 16–2016, Sections 6.1.1.4 and Section 8.4.2, to not require that room ACs designed for window installation (*i.e.,* louvered room ACs) be installed with the manufacturer-provided installation materials, including side curtains, and instead be tested with the partition wall sealed to the unit. (See section III.E.1.d of this document)

(22) The proposal to not include additional cooling mode test conditions for single-speed room ACs. (See section III.E.1.e of this document)

(23) The proposal to not establish requirements for measuring and reporting the power factors for room ACs. (See section III.E.1.f of this document)

(24) The proposal to not establish a heating mode test procedure for room ACs at this time. (See section III.E.2 of this document)

(25) The proposal to not establish a definition or test procedure for off-cycle mode. (See section III.E.3 of this document)

(26) The proposal to incorporate provisions from IEC Standard 62301 Second Edition for measuring standby mode and off mode power. (See section III.F of this document)

(27) The proposal to reference the power equipment specifications from Section 4.4 of IEC Standard 62301 Second Edition for determining standby mode and off mode power in appendix F. (See section III.F.1.a of this document)

(28) The proposal to adopt and reference the sampling method from Section 5.3.2 of IEC Standard 62301 Second Edition to determine standby mode and off mode average power in appendix F. (See section III.F.1.b of this document)

(29) The proposal to specify that all network or connectivity settings must be disabled during testing. (See section III.G of this document)

(30) The proposal to not amend the DOE test procedure for room ACs to consider energy consumption while a connected room AC responds to a DR signal. (See section III.H of this document)

(31) The proposal to maintain the current CEER calculations for single-speed room ACs at this time. (See section III.I of this document)

(32) The proposed rounding instructions in appendix F for cooling capacity, electrical input power, and CEER and to adjust the estimated annual operating cost calculation to reference the annual energy consumption for each operating mode as calculated in appendix F. (See section III.K of this document)

(33) The understanding of the estimated impact and associated costs to room AC manufacturers of the proposed amendment to test variable-speed room ACs. (See section III.L.1.a of this document)

(34) The degree to which the DOE test procedure should consider and be harmonized further with the most recent relevant industry standards for room ACs and whether any changes to the Federal test method would provide additional benefits

to the public. (See section III.L.2 of this document)

(35) The benefits and burdens of adopting any industry or voluntary consensus-based or other appropriate test procedure, without modification. (See section III.L.2 of this document)

(36) Whether the industry is considering updating its standards for room AC testing to include provisions for testing variable-speed room ACs. (See section III.L.2 of this document)

(37) Any other aspect of the existing test procedure for room ACs not already addressed by the specific areas identified in this document. (See section III.L.3 of this document)

(38) The finding that there are no small businesses that manufacture room ACs. (See section IV.C of this document)

## VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

**List of Subjects**

*10 CFR Part 429*

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

*10 CFR Part 430*

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

**Signing Authority**

This document of the Department of Energy was signed on April 30, 2020, by Alexander N. Fitzsimmons, Deputy Assistant Secretary for Energy Efficiency, 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 20, 2020.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

## PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.15 is amended by:
■ a. Removing the words ''energy efficiency ratio'' in paragraph (a)(2)(ii) and adding, in its place the words ''combined energy efficiency ratio (CEER) (determined in § 430.23(f)(3) for each unit in the sample)'';
■ b. Adding paragraphs (a)(3), (4) and (5);
■ c. Revising paragraph (b)(2); and
■ d. Adding paragraph (b)(3).

The revision and additions read as follows:

### § 429.15 Room air conditioners.

(a) * * *

(3) The cooling capacity of a basic model is the mean of the measured cooling capacities for each tested unit of the basic model, as determined in § 430.23(f)(1) of this chapter. Round the cooling capacity value to the nearest hundred.

(4) The electrical power input of a basic model is the mean of the measured electrical power inputs for each tested unit of the basic model, as determined in § 430.23(f)(2) of this chapter. Round the electrical power input to the nearest ten.

(5) Round the value of CEER for a basic model to one decimal place.

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The combined energy efficiency ratio in British thermal units per Watt-hour (Btu/Wh)), cooling capacity in British thermal units per hour (Btu/h), and the electrical power input in watts (W).

(3) Pursuant to § 429.12(b)(13), a certification report for a variable-speed room air conditioner basic model must include supplemental information and instructions in PDF format that include—

(i) The mean measured cooling capacity for the units tested at each additional test condition (*i.e.,* respectively, the mean of $Capacity_2$, $Capacity_3$, and $Capacity_4$, each expressed in Btu/h and rounded to the nearest 100 Btu/h, as determined in accordance with section 4.1.2 of appendix F of subpart B of part 430 of this chapter);

(ii) The mean electrical power input at each additional test condition (respectively, the mean of $Power_2$, $Power_3$, and $Power_4$, each expressed in W and rounded to the nearest 10 W, in accordance with section 4.1.2 of appendix F of subpart B of part 430 of this chapter, for test conditions 2, 3, and 4, in Table 1 of appendix F of subpart B of part 430 of this chapter); and

(iii) All additional testing and testing set up instructions (*e.g.,* specific operational or control codes or settings) necessary to operate the basic model under the required conditions specified by the relevant test procedure.

## PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

**Authority:** 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Section 430.2 is amended by revising the definition of ''Room air conditioner'' to read as follows:

### § 430.2 Definitions.

* * * * *

*Room air conditioner* means a window-mounted or through-the-wall-mounted encased assembly, other than a ''packaged terminal air conditioner,'' that delivers cooled, conditioned air to an enclosed space, and is powered by single-phase electric current. It includes a source of refrigeration and may include additional means for ventilating and heating.

* * * * *

■ 5. Section 430.3 is amended by:
■ a. Revising paragraph (g)(1);
■ b. In paragraph (g)(6), removing ''appendix X1'', and adding in its place, ''appendices F and X1'';
■ c. Redesignating paragraphs (g)(11) through (14) as (g)(15) through (18), respectively;
■ d. Redesignating paragraphs (g)(9) as (g)(12), and (g)(10) as (g)(13);
■ e. Redesignating paragraph (g)(8) as (g)(9);
■ f. Adding new paragraphs (g)(8), (10), (11), and (14);
■ g. Revising paragraph (i)(6);
■ g. In paragraph (p)(5), removing ''appendix F and''; and

■ h. In paragraph (p)(6), adding ''F,'' before ''G''.

The revisions and additions read as follows:

**§ 430.3 Materials incorporated by reference.**

* * * * *

(g) * * *

(1) ANSI/ASHRAE Standard 16–2016 (''ANSI/ASHRAE 16''), Method of Testing for Rating Room Air Conditioners, Packaged Terminal Air Conditioners, and Packaged Terminal Heat Pumps for Cooling and Heating Capacity, ASHRAE approved October 31, 2016, ANSI approved November 1, 2016, IBR approved for appendix F to subpart B.

* * * * *

(8) ANSI/ASHRAE Standard 41.2–1987 (RA 1992), (''ASHRAE 41.2–1987 (RA 1992)''), Standard Methods for Laboratory Airflow Measurement, ANSI reaffirmed April 20, 1992, IBR approved for appendix F to subpart B.

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(10) ANSI/ASHRAE Standard 41.3–2014, (''ASHRAE 41.3–2014''), Standard Methods for Pressure Measurement, ANSI approved July 3, 2014, IBR approved for appendix F to subpart B.

(11) ANSI/ASHRAE Standard 41.6–2014, (''ASHRAE 41.6–2014''), Standard Method for Humidity Measurement, ANSI approved July 3, 2014, IBR approved for appendix F to subpart B.

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(14) ANSI/ASHRAE Standard 41.11–2014, (''ASHRAE 41.11–2014''), Standard Methods for Power Measurement, ANSI approved July 3, 2014, IBR approved for appendix F to subpart B.

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(i) * * *

(6) ANSI/AHAM RAC–1–2015 (''ANSI/AHAM RAC–1''), Room Air Conditioners, approved 2015, IBR approved for appendix F to subpart B of this part.

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■ 6. Section 430.23 is amended by revising paragraph (f) to read as follows:

**§ 430.23 Test procedures for the measurement of energy and water consumption.**

* * * * *

(f) *Room air conditioners.* (1) Determine cooling capacity, expressed in British thermal units per hour (Btu/h), with the results of the test rounded to the nearest 100 Btu/h, as follows:

(i) For a single-speed room air conditioner, determine the cooling capacity in accordance with section 4.1.2 of appendix F of this subpart.

(ii) For a variable-speed room air conditioner, determine the cooling capacity in accordance with section 4.1.2 of appendix F of this subpart for test condition 1 in Table 1 of appendix F of this subpart.

(2) Determine electrical power input, expressed in watts (W) and rounded to the nearest 10 W as follows:

(i) For a single-speed room air conditioner, determine the electrical power input in accordance with section 4.1.2 of appendix F of this subpart.

(ii) For a variable-speed room air conditioner, determine the electrical power input in accordance with section 4.1.2 of appendix F of this subpart, for test condition 1 in Table 1 of appendix F of this subpart.

(3) Determine the combined energy efficiency ratio (CEER), expressed in British thermal units per watt-hour (Btu/Wh) and rounded to the nearest 0.1 Btu/Wh as follows:

(i) For a single-speed room air conditioner, determine the CEER in accordance with section 5.2.2 of appendix F of this subpart.

(ii) For a variable-speed room air conditioner, determine the CEER in accordance with section 5.3.11 of appendix F of this subpart.

(4) Determine the estimated annual operating cost for a room air conditioner, expressed in dollars per year, by multiplying the following two factors and rounding as directed:

(i) For single-speed room air conditioners, the sum of $AEC_{cool}$ and $AEC_{ia/om}$, determined in accordance with section 5.2.1 and section 5.1, respectively, of appendix F of this subpart. For variable-speed room air conditioners, the sum of $AEC_{wt}$ and $AEC_{ia/om}$, determined in accordance with section 5.3.4 and section 5.1, respectively, of appendix F of this subpart; and

(ii) A representative average unit cost of electrical energy in dollars per kilowatt-hour as provided by the Secretary. Round the resulting product to the nearest dollar per year.

* * * * *

■ 7. Appendix F to subpart B of part 430 is revised to read as follows:

## Appendix F to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Room Air Conditioners

**Note:** On or after [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], any representations made with respect to the energy use or efficiency of room air conditioners must be made in accordance with the results of testing pursuant to this appendix.

Prior to [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], manufacturers must either test room air conditioners in accordance with this appendix, or the previous version of this appendix as it appeared in the Code of Federal Regulations on January 1, 2020. DOE notes that, because representations made on or after [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] must be made in accordance with this appendix, manufacturers may wish to begin using this test procedure immediately.

*0. Incorporation by Reference*

DOE incorporated by reference the entire standard for ANSI/AHAM RAC–1, ANSI/ASHRAE 16, ANSI/ASHRAE 41.1, ASHRAE 41.2–1987 (RA 1992), ASHRAE 41.3–2014, ASHRAE 41.6–2014, ASHRAE 41.11–2014, and IEC 62301 in § 430.3. However, only enumerated provisions of ANSI/AHAM RAC–1 and ANSI/ASHRAE 16 apply to this appendix, as follows:

(1) ANSI/AHAM RAC–1:

(i) Section 4—Testing Conditions, Section 4.1—General, using ANSI/ASHRAE 16–2016 in place of ANSI/ASHRAE 16–1983 (RA 2014)

(ii) Section 5—Standard Measurement Test, Section 5.2—Standard Test Conditions: 5.2.1.1

(iii) Section 6—Performance Tests—Cooling Units, Section 6.1—Cooling Capacity Test, using ANSI/ASHRAE 16–2016 in place of ANSI/ASHRAE 16–1983 (RA 2014)

(iv) Section 6—Performance Tests—Cooling Units, Section 6.2—Electrical Input Test, using ANSI/ASHRAE 16–2016 in place of ANSI/ASHRAE 16–1983 (RA 2014)

(2) ANSI/ASHRAE 16:

(i) Section 3—Definitions

(ii) Section 5—Instruments

(iii) Section 6—Apparatus, Section 6.1—Calorimeters, Sections 6.1.1–6.1.1., 6.1.1.3a, 6.1.1.4–6.1.4, including Table 1

(iv) Section 7—Methods of Testing, Section 7.1—Standard Test Methods, Section 7.1a, 7.1.1a

(v) Section 8—Test Procedures, Section 8.1—General

(vi) Section 8—Test Procedures, Section 8.2—Test Room Requirements

(viii) Section 8—Test Procedures, Section 8.3—Air Conditioner Break-In

(ix) Section 8—Test Procedures, Section 8.4—Air Conditioner Installation

(x) Section 8—Test Procedures, Section 8.5—Cooling Capacity Test

(xi) Section 9—Data To Be Recorded, Section 9.1

(xii) Section 10—Measurement Uncertainty

(xiii) Normative Appendix A Cooling Capacity Calculations—Calorimeter Test Indoor and Calorimeter Test Outdoor

If there is any conflict between any industry standard(s) and this appendix, follow the language of the test procedure in this appendix, disregarding the conflicting industry standard language.

*1. Scope*

This appendix contains the test requirements to measure the energy performance of a room air conditioner.

*2. Definitions*

2.1 ''Active mode'' means a mode in which the room air conditioner is connected to a mains power source, has been activated and is performing any of the following functions: Cooling or heating the conditioned space, or circulating air through activation of its fan or blower, with or without energizing active air-cleaning components or devices such as ultra-violet (UV) radiation, electrostatic filters, ozone generators, or other air-cleaning devices.

2.2 ''ANSI/AHAM RAC–1'' means the test standard published jointly by the American National Standards Institute and the Association of Home Appliance Manufacturers, titled ''Room Air Conditioners,'' Standard RAC–1–2015 (incorporated by reference; see § 430.3).

2.3 ''ANSI/ASHRAE 16'' means the test standard published jointly by the American National Standards Institute and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers titled ''Method of Testing for Rating Room Air Conditioners and Packaged Terminal Air Conditioners,'' Standard 16–2016 (incorporated by reference; see § 430.3).

2.4 ''ANSI/ASHRAE 41.1'' means the test standard published jointly by the American National Standards Institute and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers titled ''Standard Method for Temperature Measurement,'' Standard 41.1–2013 (incorporated by reference; see § 430.3).

2.5 ''ASHRAE 41.2–1987 (RA 1992)'' means the test standard published jointly by the American National Standards Institute and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers titled ''Standard Methods for Laboratory Airflow Measurement,'' Standard 41.2–1987 (RA 1992) (incorporated by reference; see § 430.3).

2.6 ''ASHRAE 41.3–2014'' means the test standard published jointly by the American National Standards Institute and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers titled ''Standard Methods for Pressure Measurement,'' Standard 41.3–2014 (incorporated by reference; see § 430.3).

2.7 ''ASHRAE 41.6–2014'' means the test standard published jointly by the American National Standards Institute and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers titled ''Standard Method for Humidity Measurement,'' Standard 41.6–2014 (incorporated by reference; see § 430.3).

2.8 ''ASHRAE 41.11–2014'' means the test standard published jointly by the American National Standards Institute and the American Society of Heating, Refrigerating, and Air-Conditioning Engineers titled ''Standard Methods for Power Measurement,'' Standard 41.11–2014 (incorporated by reference; see § 430.3).

2.9 ''Combined energy efficiency ratio'' means the energy efficiency of a room air conditioner in British thermal units per watt-hour (Btu/Wh) and determined in section 5.2.2 of this appendix for single-speed room air conditioners and section 5.3.12 of this appendix for variable-speed room air conditioners.

2.10 ''Cooling capacity'' means the amount of cooling, in British thermal units per hour (Btu/h), provided to a conditioned space, measured under the specified conditions and determined in section 4.1 of this appendix.

2.11 ''Cooling mode'' means an active mode in which a room air conditioner has activated the main cooling function according to the thermostat or temperature sensor signal or switch (including remote control).

2.12 ''Full compressor speed (full)'' means the compressor speed at which the unit operates at full load testing conditions, achieved by following the instructions certified by the manufacturer.

2.13 ''IEC 62301'' means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (Edition 2.0 2011–01), (incorporated by reference; see § 430.3).

2.14 ''Inactive mode'' means a standby mode that facilitates the activation of active mode by remote switch (including remote control) or internal sensor or which provides continuous status display.

2.15 ''Intermediate compressor speed (intermediate)'' means the compressor speed higher than the low compressor speed by one third of the difference between low compressor speed and full compressor speed with a tolerance of plus 5 percent (designs with non-discrete speed stages) or the next highest inverter frequency step (designs with discrete speed steps), achieved by following the instructions certified by the manufacturer.

2.16 ''Low compressor speed (low)'' means the compressor speed at which the unit operates at low load test conditions, achieved by following the instructions certified by the manufacturer, such that $Capacity_4$, the measured cooling capacity at test condition 4 in Table 1 of this appendix, is no less than 47 percent and no greater than 57 percent of $Capacity_1$, the measured cooling capacity with the full compressor speed at test condition 1 in Table 1 of this appendix.

2.17 ''Off mode'' means a mode in which a room air conditioner is connected to a mains power source and is not providing any active or standby mode function and where the mode may persist for an indefinite time, including an indicator that only shows the user that the product is in the off position.

2.18 ''Single-speed room air conditioner'' means a type of room air conditioner that cannot automatically adjust the compressor speed based on detected conditions.

2.19 ''Standby mode'' means any product mode where the unit is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

(b) Continuous functions, including information or status displays (including clocks) or sensor-based functions.

2.20 ''Theoretical comparable single-speed room air conditioner'' means a theoretical single-speed room air conditioner with the same cooling capacity and electrical power input as the variable-speed room air conditioner under test, with no cycling losses considered, at test condition 1 in Table 1 of this appendix.

2.21 ''Variable-speed compressor'' means a compressor that can vary its rotational speed in non-discrete stages or discrete steps from low to full.

2.22 ''Variable-speed room air conditioner'' means a type of room air conditioner that can automatically adjust compressor speed based on detected conditions.

*3. Test Methods and General Instructions*

3.1 *Cooling mode.* The test method for testing room air conditioners in cooling mode (''cooling mode test'') consists of applying the methods and conditions in ANSI/AHAM RAC–1 Section 4, Paragraph 4.1 and Section 5, Paragraph 5.2.1.1, except in accordance with ANSI/ASHRAE 16, including the references to ANSI/ASHRAE 41.1, ANSI/ASHRAE 41.2–1987 (RA 1992), ANSI/ASHRAE 41.3–2014, ANSI/ASHRAE 41.6–2014, and ANSI/ASHRAE 41.11–2014, all referenced therein, as defined in sections 2.3 through 2.8 of this appendix. Use the cooling capacity simultaneous indoor calorimeter and outdoor calorimeter test method in Section 7.1.a and Sections 8.1 through 8.5 of ANSI/ASHRAE 16, except as otherwise specified in this appendix. If a unit can operate on multiple operating voltages as distributed in commerce by the manufacturer, test it and rate the corresponding basic models at all nameplate operating voltages. For a variable-speed room air conditioner, test the unit following the cooling mode test a total of four times: One test at each of the test conditions listed in Table 1 of this appendix, consistent with section 4.1 of this appendix.

3.1.1 *Through-the-wall installation.* Install a non-louvered room air conditioner inside a compatible wall sleeve with the provided or manufacturer-required rear grille, and with the included trim frame and other manufacturer-provided installation materials, per manufacturer instructions provided to consumers.

3.1.2 *Power measurement accuracy.* All instruments used for measuring electrical inputs to the test unit, reconditioning equipment, and any other equipment that operates within the calorimeter walls must be accurate to ±0.5 percent of the quantity measured.

3.1.3 *Electrical supply.* For cooling mode testing, test at each nameplate operating voltage, and maintain the input standard voltage within ±1 percent. Test at the rated frequency, maintained within ±1 percent.

3.1.4 *Control settings.* If the room air conditioner has network capabilities, the

network settings must be disabled throughout testing.

3.1.5 *Measurement resolution.* Record measurements at the resolution of the test instrumentation.

3.1.6 *Temperature tolerances.* Maintain each of the measured chamber dry-bulb and wet-bulb temperatures within a range of 1.0 °F.

3.2 *Standby and off modes.*

3.2.1 Install the room air conditioner in accordance with section 5, paragraph 5.2 of IEC 62301 and maintain the indoor test conditions (and outdoor test conditions where applicable) as required by section 4, paragraph 4.2 of IEC 62301. If testing is not conducted in a facility used for testing cooling mode performance, the test facility must comply with section 4, paragraph 4.2 of IEC 62301.

3.2.2 *Electrical supply.* For standby mode and off mode testing, test at each nameplate operating voltage, and maintain the input standard voltage within ±1 percent. Maintain the electrical supply at the rated frequency ±1 percent.

3.2.3 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in section 4, paragraph 4.3.2 of IEC 62301.

3.2.4 *Wattmeter.* The wattmeter used to measure standby mode and off mode power consumption must meet the resolution and accuracy requirements in Section 4, Paragraph 4.4 of IEC 62301.

3.2.5 *Air ventilation damper.* If the unit is equipped with an outdoor air ventilation damper, close this damper during standby mode and off mode testing.

*4. Test Conditions and Measurements*

4.1 *Cooling mode.*

4.1.1 *Temperature conditions.* Establish the test conditions described in sections 4 and 5 of ANSI/AHAM RAC–1 and in accordance with ANSI/ASHRAE 16, including the references to ANSI/ASHRAE 41.1 and ANSI/ASHRAE 41.6–2014, for cooling mode testing, with the following exceptions for variable-speed room air conditioners: Conduct the set of four cooling mode tests with the test conditions presented in Table 1 of this appendix. Set the compressor speed required for each test condition in accordance with instructions the manufacturer provided to DOE.

TABLE 1—INDOOR AND OUTDOOR INLET AIR TEST CONDITIONS—VARIABLE-SPEED ROOM AIR CONDITIONERS

| Test condition | Evaporator inlet (indoor) air, °F | | Condenser inlet (outdoor) air, °F | | Compressor speed |
|---|---|---|---|---|---|
| | Dry bulb | Wet bulb | Dry bulb | Wet bulb | |
| Test Condition 1 | 80 | 67 | 95 | 75 | Full |
| Test Condition 2 | 80 | 67 | 92 | 72.5 | Full |
| Test Condition 3 | 80 | 67 | 87 | 69 | Intermediate |
| Test Condition 4 | 80 | 67 | 82 | 65 | Low |

4.1.2 *Cooling capacity and power measurements.* For single-speed units, measure the cooling mode cooling capacity (expressed in Btu/h), Capacity, and electrical power input (expressed in watts), $P_{cool,}$ in accordance with section 6, paragraphs 6.1 and 6.2 of ANSI/AHAM RAC–1, respectively, and in accordance with ANSI/ASHRAE 16, including the references to ANSI/ASHRAE 41.2–1987 (RA 1992) and ANSI/ASHRAE 41.11–2014. For variable-speed room air conditioners, measure the condition-specific cooling capacity (expressed in Btu/h), $Capacity_{tc}$, and electrical power input (expressed in watts), $P_{tc}$, for each of the four cooling mode rating test conditions (tc), as required in section 6, paragraphs 6.1 and 6.2, respectively, of ANSI/AHAM RAC–1, respectively, and in accordance with ANSI/ASHRAE 16, including the references to ANSI/ASHRAE 41.2–1987 (RA 1992) and ANSI/ASHRAE 41.11–2014.

4.2 *Standby and off modes.* Establish the testing conditions set forth in section 3.2 of this appendix, ensuring the unit does not enter any active mode during the test. For a unit that drops from a higher power state to a lower power state as discussed in section 5, paragraph 5.1, Note 1 of IEC 62301, allow sufficient time for the room air conditioner to reach the lower power state before proceeding with the test measurement. Use the sampling method test procedure specified in section 5, paragraph 5.3.2 of IEC 62301 for testing all standby and off modes, with the following modifications: allow the product to stabilize for 5 to 10 minutes and use an energy use measurement period of 5 minutes.

4.2.1 If the unit has an inactive mode, as defined in section 2.14 of this appendix, as defined in section 2.17 of this appendix, measure and record the average inactive mode power, $P_{ia}$, in watts.

4.2.2 If the unit has an off mode, as defined in section 2.17 of this appendix, measure and record the average off mode power, $P_{om}$, in watts.

*5. Calculations*

5.1 *Annual energy consumption in inactive mode and off mode.* Calculate the annual energy consumption in inactive mode and off mode, $AEC_{ia/om}$, expressed in kilowatt-hours per year (kWh/year).

$$AEC_{iaom} = P_{ia} \times t_{ia} + P_{om} + t_{om}$$

Where:

$AEC_{ia/om}$ = annual energy consumption in inactive mode and off mode, in kWh/year.

$P_{ia}$ = average power in inactive mode, in watts, determined in section 4.2 of this appendix.

$P_{om}$ = average power in off mode, in watts, determined in section 4.2 of this appendix.

$t_{ia}$ = annual operating hours in inactive mode and multiplied by a 0.001 kWh/Wh conversion factor from watt-hours to kilowatt-hours. This value is 5.115 kWh/W if the unit has inactive mode and no off mode, 2.5575 kWh/W if the unit has both inactive and off mode, and 0 kWh/W if the unit does not have inactive mode.

$t_{om}$ = annual operating hours in off mode and multiplied by a 0.001 kWh/Wh conversion factor from watt-hours to kilowatt-hours. This value is 5.115 kWh/W if the unit has off mode and no inactive mode, 2.5575 kWh/W if the unit has both inactive and off mode, and 0 kWh/W if the unit does not have off mode.

5.2 *Combined energy efficiency ratio for single-speed room air conditioners.* Calculate the combined energy efficiency ratio for single-speed room air conditioners as follows:

5.2.1 *Single-speed room air conditioner annual energy consumption in cooling mode.* Calculate the annual energy consumption in cooling mode for a single-speed room air conditioner, $AEC_{cool}$, expressed in kWh/year.

$$AEC_{cool} = 0.75 \times P_{cool}$$

Where:

$AEC_{cool}$ = single-speed room air conditioner annual energy consumption in cooling mode, in kWh/year.

$P_{cool}$ = single-speed room air conditioner average power in cooling mode, in watts, determined in section 4.1.2 of this appendix.

0.75 is 750 annual operating hours in cooling mode multiplied by a 0.001 kWh/Wh conversion factor from watt-hours to kilowatt-hours.

5.2.2 *Single-speed room air conditioner combined energy efficiency ratio.* Calculate the combined energy efficiency ratio, CEER, expressed in Btu/Wh, as follows:

$$CEER = \left[\frac{Capacity}{\left(\frac{AEC_{cool} + AEC_{ia/om}}{0.75}\right)}\right]$$

Where:

CEER = combined energy efficiency ratio, in Btu/Wh.

Capacity = single-speed room air conditioner cooling capacity, in Btu/h, determined in section 4.1.2 of this appendix.

$AEC_{cool}$ = single-speed room air conditioner annual energy consumption in cooling mode, in kWh/year, calculated in section 5.2.1 of this appendix.

$AEC_{ia/om}$ = annual energy consumption in inactive mode or off mode, in kWh/year, calculated in section 5.1 of this appendix.

0.75 as defined in section 5.2.1 of this appendix.

5.3 *Combined energy efficiency ratio for variable-speed room air conditioners.* Calculate the combined energy efficiency ratio for variable-speed room air conditioners as follows:

5.3.1 *Weighted electrical power input.* Calculate the weighted electrical power input in cooling mode, $P_{wt}$, expressed in watts, as follows:

$$P_{wt} = \sum_{tc} P_{tc} \times W_{tc}$$

Where:

$P_{wt}$ = weighted electrical power input, in watts, in cooling mode.

$P_{tc}$ = electrical power input, in watts, in cooling mode for each test condition in Table 1 of this appendix.

$W_{tc}$ = weighting factors for each cooling mode test condition: 0.05 for test condition 1, 0.16 for test condition 2, 0.31 for test condition 3, and 0.48 for test condition 4.

tc represents the cooling mode test condition: ''1'' for test condition 1 (95 °F condenser inlet dry-bulb temperature), ''2'' for test condition 2 (92 °F), ''3'' for test condition 3 (87 °F), and ''4'' for test condition 4 (82 °F).

5.3.2 *Theoretical comparable single-speed room air conditioner.* Calculate the cooling capacity, expressed in Btu/h, and the electrical power input, expressed in watts, for a theoretical comparable single-speed room air conditioner at all cooling mode test conditions.

$Capacity_{ss\_tc} = Capacity_1 \times (1 + (M_c \times (95—T_{tc})))$

$P_{ss\_tc} = P_1 \times (1—(M_p \times (95—T_{tc})))$

Where:

$Capacity_{ss\_tc}$ = theoretical comparable single-speed room air conditioner cooling capacity, in Btu/h, calculated for each of the cooling mode test conditions in Table 1 of this appendix.

$Capacity_1$ = variable-speed room air conditioner unit's cooling capacity, in Btu/h, determined in section 4.1.2 of this appendix for test condition 1 in Table 1 of this appendix.

$P_{ss\_tc}$ = theoretical comparable single-speed room air conditioner electrical power input, in watts, calculated for each of the cooling mode test conditions in Table 1 of this appendix.

$P_1$ = variable-speed room air conditioner unit's electrical power input, in watts, determined in section 4.1.2 of this appendix for test condition 1 in Table 1 of this appendix.

$M_c$ = adjustment factor to determine the increased capacity at lower outdoor test conditions, 0.0099 per °F.

$M_p$ = adjustment factor to determine the reduced electrical power input at lower outdoor test conditions, 0.0076 per °F.

95 is the condenser inlet dry-bulb temperature for test condition 1 in Table 1 of this appendix, 95 °F.

$T_{tc}$ = condenser inlet dry-bulb temperature for each of the test conditions in Table 1 of this appendix (in °F).

tc as explained in section 5.3.1 of this appendix.

5.3.3 *Variable-speed room air conditioner unit's annual energy consumption for cooling mode at each cooling mode test condition.* Calculate the annual energy consumption for cooling mode under each test condition, $AEC_{tc,}$ expressed in kilowatt-hours per year (kWh/year), as follows:

$AEC_{tc} = 0.75 \times P_{tc}$

Where:

$AEC_{tc}$ = variable-speed room air conditioner unit's annual energy consumption, in kWh/year, in cooling mode for each test condition in Table 1 of this appendix.

$P_{tc}$ = as defined in section 5.3.1 of this appendix.

0.75 as defined in section 5.2.1 of this appendix.

tc as explained in section 5.3.1 of this appendix.

5.3.4 *Variable-speed room air conditioner weighted annual energy consumption.* Calculate the weighted annual energy consumption in cooling mode for a variable-speed room air conditioner, $AEC_{wt}$, expressed in kWh/year.

$AEC_{wt} = \Sigma_{tc} AEC_{tc} \times W_{tc}$

Where:

$AEC_{wt}$ = weighted annual energy consumption in cooling mode for a variable-speed room air conditioner, expressed in kWh/year.

$AEC_{tc}$ = variable-speed room air conditioner unit's annual energy consumption, in kWh/year, in cooling mode for each test condition in Table 1 of this appendix, determined in section 5.3.3 of this appendix.

$W_{tc}$ = weighting factors for each cooling mode test condition: 0.05 for test condition 1, 0.16 for test condition 2, 0.31 for test condition 3, and 0.48 for test condition 4.

tc as explained in section 5.3.1 of this appendix.

5.3.5 *Theoretical comparable single-speed room air conditioner annual energy consumption in cooling mode at each cooling mode test condition.* Calculate the annual energy consumption in cooling mode for a theoretical comparable single-speed room air conditioner for cooling mode under each test condition, $AEC_{ss\_tc}$, expressed in kWh/year.

$AEC_{ss\_tc} = 0.75 \times P_{ss\_tc}$

Where:

$AEC_{ss\_tc}$ = theoretical comparable single-speed room air conditioner annual energy consumption, in kWh/year, in cooling mode for each test condition in Table 1 of this appendix.

$P_{ss\_tc}$ = theoretical comparable single-speed room air conditioner electrical power input, in watts, in cooling mode for each test condition in Table 1 of this appendix, determined in section 5.3.2 of this appendix.

0.75 as defined in section 5.2.1 of this appendix.

tc as explained in section 5.3.1 of this appendix.

5.3.6 *Variable-speed room air conditioner combined energy efficiency ratio at each cooling mode test condition.* Calculate the variable-speed room air conditioner unit's combined energy efficiency ratio, $CEER_{tc}$, for each test condition, expressed in Btu/Wh.

$$CEER_{tc} = \frac{Capacity_{tc}}{\left(\frac{AEC_{tc} + AEC_{ia/om}}{0.75}\right)}$$

Where:

$CEER_{tc}$ = variable-speed room air conditioner unit's combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1 of this appendix.

$Capacity_{tc}$ = variable-speed room air conditioner unit's cooling capacity, in Btu/h, for each test condition in Table 1 of this appendix, determined in section 4.1.2 of this appendix.

$AEC_{tc}$ = variable-speed room air conditioner unit's annual energy consumption, in kWh/year, in cooling mode for each test condition in Table 1 of this appendix, determined in section 5.3.3 of this appendix.

$AEC_{ia/om}$ = annual energy consumption in inactive mode of off mode, in kWh/year, determined in section 5.1 of this appendix.

0.75 as defined in section 5.2.1 of this appendix.

tc as explained in section 5.3.1 of this appendix.

5.3.7 *Theoretical comparable single-speed room air conditioner combined energy efficiency ratio.* Calculate the combined energy efficiency ratio for a theoretical comparable single-speed room air conditioner, $CEER_{ss\_tc,}$ for each test condition, expressed in Btu/Wh.

$$CEER_{ss\_tc} = \frac{Capacity_{ss\_tc}}{\left(\frac{AEC_{ss\_tc} + AEC_{ia/om}}{0.75}\right)}$$

Where:

$CEER_{ss\_tc}$ = theoretical comparable single-speed room air conditioner combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1 of this appendix.

$Capacity_{ss\_tc}$ = theoretical comparable single-speed room air conditioner cooling capacity, in Btu/h, for each test condition in Table 1 of this appendix, determined in section 5.3.2 of this appendix.

$AEC_{ss\_tc}$ = theoretical comparable single-speed room air conditioner annual energy consumption, in kWh/year, in cooling mode for each test condition in Table 1 of this appendix, determined in section 5.3.5 of this appendix.

$AEC_{ia/om}$ = annual energy consumption in inactive mode or off mode, in kWh/year, determined in section 5.1 of this appendix.

0.75 as defined in section 5.2.1 of this appendix.

tc as explained in section 5.3.1 of this appendix.

5.3.8 *Theoretical comparable single-speed room air conditioner adjusted combined energy efficiency ratio.* Calculate the adjusted combined energy efficiency ratio, for a theoretical comparable single-speed room air conditioner, $CEER_{ss\_tc\_adj}$, with cycling losses considered, for each test condition, expressed in Btu/Wh.

$CEER_{ss\_tc\_adj} = CEER_{ss\_tc}$ $CEER_{tc} \times CLF_{tc}$

Where:

$CEER_{ss\_tc\_adj}$ = theoretical comparable single-speed room air conditioner adjusted combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1 of this appendix.

$CEER_{ss\_tc}$ = theoretical comparable single-speed room air conditioner combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1 of this appendix, determined in section 5.3.7 of this appendix.

$CLF_{tc}$ = cycling loss factor for each test condition; 1 for test condition 1, 0.971 for test condition 2, 0.923 for test condition 3, and 0.875 for test condition 4.

tc as explained in section 5.3.1 of this appendix.

5.3.9 *Weighted combined energy efficiency ratio.* Calculate the weighted combined energy efficiency ratio for the variable-speed room air conditioner unit, $CEER_{wt}$, and theoretical comparable single-speed room air conditioner, $CEER_{ss\_wt}$, expressed in Btu/Wh.

$CEER_{wt} = \Sigma_{tc} CEER_{tc} \times W_{tc}$

$CEER_{ss\_wt} = \Sigma_{tc} CEER_{ss\_tc\_adj} \times W_{tc}$

Where:

$CEER_{wt}$ = variable-speed room air conditioner unit's weighted combined energy efficiency ratio, in Btu/Wh.

$CEER_{ss\_wt}$ = theoretical comparable single-speed room air conditioner weighted combined energy efficiency ratio, in Btu/Wh.

$CEER_{tc}$ = variable-speed room air conditioner unit's combined energy efficiency ratio, in Btu/Wh, at each test condition in Table 1 of this appendix, determined in section 5.3.6 of this appendix.

$CEER_{ss\_tc\_adj}$ = theoretical comparable single-speed room air conditioner adjusted combined energy efficiency ratio, in Btu/Wh, at each test condition in Table 1 of this appendix, determined in section 5.3.8 of this appendix.

$W_{tc}$ as defined in section 5.3.4 of this appendix.

tc as explained in section 5.3.1 of this appendix.

5.3.10 *Variable-speed room air conditioner performance adjustment factor.* Calculate the variable-speed room air conditioner unit's performance adjustment factor, $F_{p.}$

$$F_p = \frac{\left(CEER_{wt} - CEER_{ss\_wt}\right)}{CEER_{ss\_wt}}$$

Where:

$F_p$ = variable-speed room air conditioner unit's performance adjustment factor.

$CEER_{wt}$ = variable-speed room air conditioner unit's weighted combined energy efficiency ratio, in Btu/Wh, determined in section 5.3.9 of this appendix.

$CEER_{ss\_wt}$ = theoretical comparable single-speed room air conditioner weighted combined energy efficiency ratio, in Btu/Wh, determined in section 5.3.9 of this appendix.

5.3.11 *Variable-speed room air conditioner combined energy efficiency ratio.* Calculate the combined energy efficiency ratio, CEER, expressed in Btu/Wh, for variable-speed air conditioners.

$CEER = CEER_1 \times (1 + F_p)$

Where:

CEER = combined energy efficiency ratio, in Btu/Wh.

$CEER_1$ = variable-speed room air conditioner combined energy efficiency ratio for test condition 1 in Table 1 of this appendix, in Btu/Wh, determined in section 5.3.6 of this appendix.

$F_p$ = variable-speed room air conditioner performance adjustment factor, determined in section 5.3.10 of this appendix.

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Part III

## Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 53
Tax on Excess Tax-Exempt Organization Executive Compensation; Proposed Rule

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 53**

**[REG–122345–18]**

**RIN 1545–BO99**

## Tax on Excess Tax-Exempt Organization Executive Compensation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document sets forth proposed regulations under section 4960 of the Internal Revenue Code (Code), which imposes an excise tax on remuneration in excess of $1,000,000 and any excess parachute payment paid by an applicable tax-exempt organization to any covered employee. The regulations affect certain tax-exempt organizations and certain entities that are treated as related to those organizations. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments and requests for a public hearing must be received by August 10, 2020. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–122345–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and, to the extent practicable, on paper to its public docket.

*Send paper submissions to:* CC:PA:LPD:PR (REG–122345–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning these proposed regulations, William McNally at (202) 317–5600 or Patrick Sternal at (202) 317–5800; concerning submission of comments and/or requests for a public hearing, Regina Johnson, (202) 317–5177 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

### Background

*I. Section 4960—Enactment and Essential Statutory Provisions*

This document sets forth proposed regulations under section 4960 of the Internal Revenue Code (Code) amending part 53 of the Excise Tax Regulations (26 CFR part 53). Section 4960 was added to the Code by section 13602 of the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054, 2157 (TCJA). Section 4960(a) generally provides that an applicable tax-exempt organization (ATEO) that for a taxable year pays to a covered employee remuneration in excess of $1 million or any excess parachute payment is subject to an excise tax on the amount of the excess remuneration plus excess parachute payments paid during that taxable year at a rate equal to the rate of tax imposed on corporations under section 11 (21 percent for 2020).

ATEO is defined in section 4960(c)(1) as any organization which for the taxable year is exempt from taxation under section 501(a), is a farmers' cooperative organization described in section 521(b)(1), has income excluded from taxation under section 115(1), or is a political organization described in section 527(e)(1).

Covered employee is defined in section 4960(c)(2) as any employee (including any former employee) of an ATEO if the employee is one of the five highest-compensated employees of the organization for the taxable year or was a covered employee of the organization (or predecessor) for any preceding taxable year beginning after December 31, 2016.

Remuneration is defined in section 4960(c)(3)(A) as wages (as defined in section 3401(a)), except that such term does not include any section 402A(c) designated Roth contribution and includes amounts required to be included in gross income under section 457(f). The flush language of section 4960(a) provides that for purposes of applying section 4960(a)(1) and (2), remuneration is treated as paid when there is no substantial risk of forfeiture (within the meaning of section 457(f)(3)(B)) of the rights to such remuneration. Section 4960(c)(3)(B) provides that remuneration does not include any remuneration paid to a licensed medical professional (including a veterinarian) for the performance of medical or veterinary services.

Section 4960(c)(4)(A) provides that remuneration paid to a covered employee by an ATEO includes any remuneration paid with respect to employment of such employee by any related person or governmental entity. Section 4960(c)(4)(B) provides that a person or governmental entity is treated as related to an ATEO if such person or governmental entity: Controls, or is controlled by, the ATEO; is controlled by one or more persons which control the ATEO; is a supported organization (as defined in section 509(f)(3)) during the taxable year with respect to the ATEO; is a supporting organization described in section 509(a)(3) during the taxable year with respect to the ATEO; or, in the case of an ATEO which is a voluntary employees' beneficiary association (VEBA) under section 501(c)(9), establishes, maintains, or makes contributions to the VEBA.

Excess parachute payment is defined in section 4960(c)(5)(A) as an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment. Section 4960(c)(5)(D) provides that rules similar to the rules of section 280G(b)(3) apply for purposes of determining the ''base amount.'' Section 280G(b)(3) provides that the ''base amount'' is an individual's annualized compensation over the ''base period,'' which is the individual's last five taxable years.

Parachute payment is defined in section 4960(c)(5)(B) as any payment in the nature of compensation to (or for the benefit of) a covered employee if the payment is contingent on the employee's separation from employment with the employer and the aggregate present value of the payments in the nature of compensation to (or for the benefit of) the individual that are contingent on the separation equals or exceeds 3-times the base amount. Section 4960(c)(5)(C) provides that a parachute payment does not include any payment: Described in section 280G(b)(6) (relating to exemption from payments under qualified plans); made under or to an annuity contract described in section 403(b) or a plan described in section 457(b); made to a licensed medical professional (including a veterinarian) to the extent the payment is for the performance of medical or veterinary services by the professional; or made to an individual who is not a highly compensated employee as defined in section 414(q).

The statute grants the Secretary authority to prescribe regulations as may be necessary to prevent avoidance of the tax under section 4960, including

regulations to prevent avoidance of the tax through the performance of services other than as an employee or by providing compensation through a pass-through or other entity to avoid the tax.

Section 4960, added to the Code by section 13602(a) of TCJA, is effective for taxable years beginning after December 31, 2017.

*II. Notice 2019–09*

On December 31, 2018, the Treasury Department and the IRS issued Notice 2019–09 (2019–04 I.R.B. 403), setting forth initial guidance on the application of section 4960. The notice provides that taxpayers may rely on that guidance, and that, until further guidance is issued, in order to comply with the requirements of section 4960, taxpayers may base their positions upon a reasonable, good faith interpretation of the statute (including consideration of the legislative history, as appropriate). The notice also provides that certain interpretations of section 4960 are not consistent with a reasonable, good faith interpretation of the statutory language, and that the Treasury Department and the IRS intend to embody those positions as part of forthcoming proposed regulations. For further information about continued reliance on the guidance in Notice 2019–09, see part VII of the Explanation of Provisions section, titled ''Proposed Applicability Dates.''

The notice provides that any future guidance will be prospective and requests comments on the topics addressed in the notice, as well as comments on any other issues arising under section 4960. The Treasury Department and the IRS considered each of the comments received in drafting these proposed regulations. These proposed regulations are based in large part on Notice 2019–09, with changes as appropriate based on comments received.

**Explanation of Provisions**

*I. Scope of Proposed Regulations*

These proposed regulations are intended to provide comprehensive guidance with regard to section 4960. These proposed regulations restate certain statutory definitions and define various terms appearing in section 4960. These proposed regulations also provide rules for determining: The amount of remuneration paid for a taxable year (including for purposes of identifying covered employees); whether a parachute payment is paid; whether excess remuneration is paid and in what amount; whether an excess parachute payment is paid and in what amount; and the allocation of liability for the excise tax among related organizations. These definitions and rules are proposed to apply solely for purposes of section 4960.

*II. Definitions*

A. Applicable Tax-Exempt Organization

Commenters requested clarification of the status of governmental entities as ATEOs. As defined in section 4960(c)(1), ''ATEO'' includes an organization that has income excluded from taxation under section 115(1) or an organization that is exempt from taxation under section 501(a). For example, Federal instrumentalities exempt from tax under section 501(c)(1) and public universities with IRS determination letters recognizing their tax-exempt status under section 501(c)(3) are governmental entities exempt from tax under section 501(a), and thus are ATEOs.

A governmental entity that is separately organized from a state or political subdivision of a state may meet the requirements to exclude income from gross income (and thereby have income excluded from taxation) under section 115(1). See Rev. Rul. 77–261 (1977–2 C.B. 45). However, a state, political subdivision of a state, or integral part of a state or political subdivision, often referred to as a ''governmental unit'' (as in sections 170(b)(1)(A)(v) and 170(c)(1)) does not meet the requirements to exclude income from gross income under section 115(1) because section 115(1) does not apply to income from an activity that the state conducts directly, rather than through a separate entity. See Rev. Rul. 77–261; see also Rev. Rul. 71–131 (1971–1 C.B. 28) (superseding and restating the position stated in G.C.M. 14407 (1935–1 C.B. 103)).

Instead, under the doctrine of implied statutory immunity, the income of a governmental unit generally is not taxable in the absence of specific statutory authorization for taxing that income. See Rev. Rul. 87–2 (1987–1 C.B. 18); Rev. Rul. 71–131; Rev. Rul. 71–132 (1971–1 C.B. 29); and G.C.M. 14407. Section 511(a)(2)(B), which imposes tax on the unrelated business taxable income of state colleges and universities, is an example of a specific statutory authorization for taxing income earned by a state, a political subdivision of a state, or an integral part of a state or political subdivision of a state. Thus, under section 4960(c)(1), a governmental entity (including a state college or university) that does not have a determination letter recognizing its exemption from taxation under section 501(a) and that does not exclude income from gross income under section 115(1) is not an ATEO. However, such a governmental entity may be liable for excise tax under section 4960 if it is a related organization under section 4960(c)(4)(B) with respect to an ATEO.

A governmental entity that sought and received a determination letter recognizing its tax-exempt status under section 501(c)(3) may relinquish this status pursuant to the procedures described in section 3.01(12) of Rev. Proc. 2020–5 (2020–1 I.R.B. 241, 246) (or the analogous section in any successor revenue procedure). However, an entity that excludes all or part of its income from gross income under section 115(1) is an ATEO regardless of whether it has a private letter ruling to that effect.

One commenter requested that proposed regulations specify that certain Federal instrumentalities are not subject to section 4960 excise tax because their enabling statute exempts them from all existing and future Federal taxes, reasoning that Congress did not specifically override the enabling statute in enacting section 4960. This reasoning, if accepted, would exempt many or most Federal instrumentalities from tax under section 4960, both as ATEOs and as related persons or governmental entities. Section 4960 explicitly designates as ATEOs all organizations exempt from taxation under section 501(a). Federal instrumentalities organized under an Act of Congress before July 18, 1984, and exempt from Federal income tax under such Act, are exempt organizations under section 501(a) because they are described in section 501(c)(1). A section 501(c)(1) organization is also a ''person or governmental entity'' that may be a related organization under section 4960(c)(4). Other Code provisions, such as section 511(a)(2)(A) (which extended unrelated business income tax to exempt organizations), specifically exclude section 501(c)(1) organizations (or particular section 501(c)(1) organizations).[1] In contrast, a similar

[1] Sections 3112 and 3308 provide that Federal instrumentalities are not exempt from Federal Insurance Contributions Act (FICA) taxes and Federal Unemployment Tax Act (FUTA) taxes, respectively, unless there is a specific provision of law granting that exemption. Prior to 1950, the predecessor to the FICA statute itself incorporated an exemption from FICA for ''an instrumentality of the United States which is . . . exempt from the employers' tax imposed by [the predecessor of section 3111 imposing the employer share of FICA tax] of the Internal Revenue Code by virtue of any other provision of law.'' Congress amended the statute in 1949 to exempt such instrumentalities only if they are exempt from the tax ''by virtue of

Continued

exclusion was not included in section 4960 even though section 4960 applies to section 501(c)(1) organizations through reference to entities exempt under section 501(a). Thus, the Treasury Department and the IRS consider Federal instrumentalities to be subject to section 4960, and these proposed regulations do not adopt the commenter's suggestion. However, the Treasury Department and the IRS request comments regarding the application of section 4960 to these Federal instrumentalities.

These proposed regulations also address the status of foreign organizations as ATEOs. A foreign organization that otherwise qualifies as an ATEO will be treated as an ATEO unless it is described in section 4948(b) and the regulations thereunder. Section 4948(b) excludes foreign organizations from the application of excise taxes under chapter 42 (which includes section 4960) if they receive substantially all of their support (other than gross investment income) from sources outside the United States. Section 53.4948–1(a)(1) defines a ''foreign organization'' for this purpose as an organization not described in section 170(c)(2)(A) (that is, not created or organized in the United States or in any possession thereof, or under the law of the United States, any State, the District of Columbia, or any possession of the United States).

One commenter asked whether a foreign organization can be a related organization. Section 4960(c)(4)(B) does not distinguish between domestic and foreign organizations for purposes of determining status as a related organization to an ATEO. However, the Treasury Department and the IRS are considering whether section 4948(b) should apply to exempt a foreign organization (that otherwise meets the definition of ''related organization'') from liability for tax under section 4960(c)(4)(C). For example, in the context of the section 4958 excise tax on excess benefit transactions, an organization is excepted from status as an applicable tax-exempt organization if it is described in section 4948(b) (see § 53.4958–2(b)(2)); thus, the tax under section 4958 does not apply to a disqualified person with respect to such a foreign organization. The Treasury Department and the IRS request comments on whether a foreign related organization described in section 4948(b) may be liable for tax under section 4960(c)(4)(C). The Treasury Department and the IRS also request comments on whether, for purposes of determining excess remuneration and allocating liability among the ATEO and related organizations, remuneration paid by a foreign related organization described in section 4948(b) should be taken into account even if the foreign related organization is exempt from liability for section 4960 tax.

B. Applicable Year

1. In General

Section 4960(a)(1) refers to remuneration paid ''for the taxable year,'' but does not specify which taxpayer's taxable year is referenced, what it means for remuneration to be paid ''for'' a taxable year, or how to measure remuneration if an ATEO and a related organization have different taxable years. These proposed regulations provide that remuneration is paid for a taxable year if it is paid during the ''applicable year,'' which is defined in these proposed regulations as the calendar year ending with or within an ATEO's taxable year.

Commenters were unsure whether ''taxable year'' refers to the taxable year of the ATEO, the related organization, or the covered employee. In addition, commenters noted that a tax-exempt organization's ''taxable year'' for purposes of section 4960 is not always obvious because generally a tax-exempt organization does not pay taxes and because section 4960 does not include its own definition of ''taxable year.'' The Treasury Department and IRS developed the applicable year concept to resolve this ambiguity. Prescribing a single period resolves this issue and also reduces the administrative burdens that would arise if ATEOs and related organizations liable for the excise tax were required to allocate remuneration paid during a single calendar year to multiple non-calendar taxable years. Moreover, this approach reduces administrative burdens by aligning more closely with the calendar year reporting of compensation on Form W–2, ''Wage and Tax Statement,'' and on Part VII and Schedule J of Form 990, ''Return of Organization Exempt From Income Tax.'' Finally, the concept of an applicable year aligns with the period for identifying highly compensated employees under section 414(q), as required for determining whether certain payments are excess parachute payments.

Remuneration paid during an applicable year is also used for identifying the five highest-compensated employees for a taxable year and thus the covered employees of the ATEO for the taxable year (who will remain covered employees for all future taxable years). Generally, status as an ATEO will not change during the taxable year, in which case the full twelve months of the applicable year is used as the measuring period. However, for the taxable year in which the ATEO becomes an ATEO (for example, if the ATEO is formed mid-year), or taxable year in which the ATEO ceases to be an ATEO (for example, due to corporate dissolution or revocation of exemption), adjustments to the standard applicable year may be necessary.

2. Rules Addressing the First Taxable Year an Organization Becomes an ATEO

For the taxable year in which an organization becomes an ATEO, the applicable year begins on the date the organization becomes an ATEO and ends on December 31 of that calendar year (''short applicable year''). For a calendar year taxpayer, the short applicable year is taken into account for the taxable year ending on the same date. For fiscal year taxpayers, the short applicable year is taken into account for the taxable year in which the short applicable year ends. If the ATEO has any related organizations, only the compensation paid (or treated as paid) by the related organizations during the short applicable year is taken into account for purposes of determining the amount of remuneration paid by the ATEO for that year.

3. Rules Addressing the Taxable Year in Which ATEO Status Terminates

For ATEOs with a calendar year taxable year, termination of ATEO status generally results in a short applicable year. The applicable year starts with January 1 and ends on the date of termination of ATEO status. For ATEOs with a fiscal year taxable year, termination of ATEO status may result in two applicable years being taken into account for the taxable year in which termination occurs. If the termination of ATEO status occurs on or before December 31 of the calendar year ending within the taxable year of the termination, then the applicable year for that taxable year starts January 1 and ends on the date of termination of status. If the termination of ATEO status occurs after December 31 of the calendar year ending within the taxable year of the termination, then the ATEO has two

any provision of law which *specifically refers to such section* in granting such exemption.'' (Emphasis added.) Accordingly, prior to 1950, a general exemption was effective for purposes of FICA's predecessor but only because the general exemption was incorporated into the predecessor statute. That is not the case with section 4960. Rather federal instrumentalities are subject to section 4960 by virtue of being ''organizations exempt from taxation under section 501(a),'' and no exemption is provided.

applicable years for the taxable year: The full calendar year ending within the taxable year in which the termination of ATEO status occurs and the period starting on January 1 of the calendar year in which termination of ATEO status occurs and ending on the date of termination. While liability for the tax for both applicable years is aggregated and reported for the taxable year of termination of ATEO status, covered employees and the amount of the tax for each applicable year are determined separately for each applicable year. For example, if an ATEO with no related organizations paid a covered employee $1.1 million of remuneration in the first applicable year (the full 12-month applicable year) and $500,000 in the second applicable year (the short applicable year ending on the date of termination of ATEO status), the ATEO would be liable for excise tax only on the $100,000 of excess remuneration it paid in the first (full) applicable year and would not be treated as paying any excess remuneration for the second (short) applicable year.

C. Employee

Section 4960(a) imposes a tax on excess remuneration and any excess parachute payment paid by an ATEO for the taxable year with respect to employment of a covered employee. Section 4960(c)(2) defines a ''covered employee'' as an employee (including any former employee) of the ATEO who meets certain other conditions. Accordingly, the tax imposed by section 4960(a) applies only with respect to a current or former employee of the ATEO.

Because the tax under section 4960(a)(1) applies to remuneration paid to a covered employee, and section 4960(c)(3)(A) defines ''remuneration'' as including wages under section 3401(a) (related to Federal income tax withholding) other than any designated Roth contribution as defined in section 402A(c), these proposed regulations define ''employee'' consistent with the definition of ''employee'' for purposes of Federal income tax withholding in section 3401(c) and the regulations thereunder. Specifically, the proposed regulations cross-reference the definition of ''employee'' in § 31.3401(c)–1, which includes common-law employees, officers or elected or appointed officials of governments, or agencies or instrumentalities thereof, and certain officers of corporations. These proposed regulations reiterate certain rules from § 31.3401(c)–1 that are particularly relevant to section 4960, including the rules that a member of a board of directors of a corporation is not an employee of the corporation (in the capacity as a director), and that an officer is an employee of the entity for which the officer serves as an officer (unless the officer performs no services or only minor services and neither receives, nor is entitled to receive, any remuneration, as discussed in part II.E. of this preamble, titled ''Covered employee''). Accordingly, the Treasury Department and the IRS did not adopt one commenter's suggestion that an officer of an ATEO not be presumptively treated as an employee of the ATEO. For further discussion of this definition of ''employee'' and other proposed rules intended to address employees of non-ATEO related organizations performing limited or temporary services for the related ATEO (in particular, while also receiving compensation from the non-ATEO related organization), see part II.E.2. of this preamble, titled ''Volunteer Services and Similar Exceptions.''

D. Employer

Section 4960(b) provides that the employer is liable for the tax imposed under section 4960(a). Similar to the definition of ''employee,'' these proposed regulations define ''employer'' consistent with the definition of ''employer'' for purposes of Federal income tax withholding in section 3401(d) and the regulations thereunder, without regard to the special rules in section 3401(d)(1) and (2). Accordingly, control of the payment of wages is not relevant for determining whether an entity is the employer for section 4960 purposes. Further, these proposed regulations provide that a person or governmental entity does not avoid status as an employer of an employee by using a third-party payor to pay remuneration to that employee. Third-party payors include a payroll agent, common paymaster, statutory employer under section 3401(d)(1), or certified professional employer organization under section 7705 (under the Code, an ''employer'' for subtitle C purposes only). Further, consistent with existing principles for determining the employer, under certain facts and circumstances, a management company may also be acting as a third-party payor for the employees of its ATEO client, rather than as the common law employer of the employees. Thus, as set forth in these proposed regulations, remuneration that is paid by a separate organization to an individual for services the individual performed as an employee of the ATEO, whether related to the ATEO or not, is deemed remuneration paid by the ATEO for purposes of section 4960. These proposed regulations also specify that calculation of the excise tax is separate from any arrangement that an ATEO and any related organization may have for bearing the cost of the excise tax under section 4960.

In addition, these proposed regulations provide that the sole owner of an entity that is disregarded as separate from its owner under § 301.7701–2(c)(2)(i) is treated as the employer of any employee of the disregarded entity, notwithstanding that the entity is regarded for subtitle C purposes under § 301.7701–2(c)(2)(iv).

E. Covered Employee

1. In General

Consistent with section 4960(c)(2), these proposed regulations define ''covered employee'' to mean any individual who is one of the five highest-compensated employees of the ATEO for a taxable year or was a covered employee of the ATEO (or any predecessor) for any preceding taxable year beginning after December 31, 2016. These proposed regulations provide that whether an employee is one of the five highest-compensated employees of an ATEO is determined separately for each ATEO and not for the entire group of related organizations. As a result, a group of related ATEOs can have more than five highest-compensated employees for a taxable year. Similarly, an employee may be a covered employee of more than one ATEO in a related group of organizations for a taxable year. Once an employee is a covered employee of an ATEO, the employee continues to be a covered employee for all subsequent taxable years of that ATEO. One commenter suggested a minimum dollar threshold for determining the five highest-compensated employees. These proposed regulations do not set a minimum dollar threshold for an employee to be a covered employee because there is no minimum threshold provided in the statute. Thus, an employee need not be paid excess remuneration or an excess parachute payment or be a highly compensated employee within the meaning of section 414(q) to be a covered employee of an ATEO for a taxable year and all future taxable years. (Note, however, that if an ATEO never pays a covered employee excess remuneration or an excess parachute payment, then there would be no section 4960 excise tax with respect to the covered employee.)

Commenters suggested that the Treasury Department and the IRS provide a rule of administrative

convenience under which a covered employee is no longer considered a covered employee of an ATEO after a certain period of time has elapsed during which the employee was not an active employee of the ATEO. These proposed regulations do not adopt that suggestion because such a rule would be inconsistent with the statute.

The Treasury Department and the IRS considered using certain existing reporting standards for determining the amount of compensation paid to an employee for purposes of identifying the five highest-compensated employees for a taxable year under section 4960, such as the Securities and Exchange Commission standards that are used for section 162(m) purposes or the standards that are used for Form 990 reporting purposes. These proposed regulations generally use remuneration paid during the applicable year for purposes of identifying an ATEO's five highest-compensated employees for a taxable year because remuneration is an appropriate representation of compensation earned by an employee and it is more administrable to use a single standard for identifying covered employees and computing the tax, if any, imposed by section 4960(a)(1). However, these proposed regulations provide that while remuneration for which a deduction is disallowed under section 162(m) is generally not taken into account for purposes of determining the amount of remuneration paid for a taxable year, it is taken into account as remuneration paid for purposes of determining an ATEO's five highest-compensated employees. This rule is needed to ensure proper coordination between the rules under section 162(m) and the rules under section 4960.

These proposed regulations also provide that, for purposes of determining whether an employee is one of an ATEO's five highest-compensated employees for a taxable year, remuneration paid by the ATEO during the applicable year is aggregated with remuneration paid by any related organization during the ATEO's applicable year, including remuneration paid by a related for-profit organization or governmental entity, for services performed as an employee of such related organization. For a description of proposed rules intended to address certain situations in which an employee of a non-ATEO performs limited or temporary services for a related ATEO, see part II.E.2. of this preamble, titled ''Volunteer Services and Similar Exceptions.''

Consistent with section 4960(c)(3)(B), these proposed regulations provide that for purposes of identifying an ATEO's five highest-compensated employees for a taxable year, remuneration paid during the applicable year for medical services is not taken into account. See H. Rept. 115–466, at 494 (2017) (''[f]or purposes of determining a covered employee, remuneration paid to a licensed medical professional which is directly related to the performance of medical or veterinary services by such professional is not taken into account, whereas remuneration paid to such a professional in any other capacity is taken into account.''). For a discussion of the proposed rules addressing identification of remuneration paid for medical or veterinary services, see section II.F. of this preamble, titled ''Medical Services.''

2. Volunteer Services and Similar Exceptions

Many commenters expressed concern that the rules for identifying an ATEO's five highest-compensated employees provided in Notice 2019–09 would subject a non-ATEO to the excise tax on remuneration it pays to an employee who performs limited or temporary services for a related ATEO and who typically receives remuneration only from the non-ATEO. In this scenario, the allocation rules in Notice 2019–09 would allocate the entire excise tax to the non-ATEO. In addition, because the individual would continue to be treated as a covered employee of the ATEO for all subsequent taxable years, the non-ATEO would continue to be subject to the excise tax on any excess remuneration it paid to that employee for his or her remaining period of service as an employee of the non-ATEO, even if the individual ceased performing services as an employee of the ATEO (for example, upon ''returning'' to the non-ATEO after a temporary assignment at the ATEO). The commenters criticized this result, suggesting that the individual typically is performing services for the ATEO solely as a ''volunteer'' and that application of the excise tax would force significant changes to existing structures to avoid the tax, including possible dissolution of the ATEO or utilization of ATEO funds to procure separate services from other individuals with no employment relationship at the related non-ATEO. They argued that Congress did not intend to impose the excise tax under section 4960 in these circumstances.

Commenters suggested several modifications to the guidance provided in Notice 2019–09 in order to avoid these results. After consideration of the comments received, the Treasury Department and the IRS propose exceptions to the definition of ''employee'' and ''covered employee'' and the rules for identifying the five highest-compensated employees to address these concerns. These exceptions are intended to ensure that certain employees of a related non-ATEO providing services as an employee of an ATEO are not treated as one of the five highest-compensated employees of the ATEO, provided that certain conditions related to the individuals' remuneration or hours of service are met. To avoid manipulation of the rules through the deferral of compensation, in determining whether an employee is one of the five highest-compensated employees, a grant of a legally binding right to vested remuneration is considered to be remuneration paid, and any grant of a legally binding right to nonvested remuneration by the ATEO (or a related ATEO), for example, under a deferred compensation plan or arrangement, disqualifies the ATEO from claiming a relevant exception.

Remuneration paid to an individual who is never an employee of the ATEO is not taken into account for purposes of section 4960. For example, an individual who, under all the facts and circumstances, performs services for the ATEO solely as a bona fide independent contractor is not an employee of the ATEO and thus is not considered for purposes of determining the ATEO's five highest-compensated employees. Similarly, an individual who, under all the facts and circumstances, performs services solely as a bona fide employee of a related organization, including a related organization that provides services to the ATEO, is not an employee of the ATEO and thus is not considered for purposes of determining the ATEO's five highest-compensated employees.

In addition, these proposed regulations provide that for purposes of determining an ATEO's five highest-compensated employees for a taxable year, an employee is disregarded if neither the ATEO nor any related organization pays remuneration or grants a legally binding right to nonvested remuneration for services the individual performed as an employee of the ATEO or any related organization. This clarifies that if none of the ATEO's employees received remuneration from the ATEO or from a related organization, then the ATEO has no covered employees (instead of requiring that some employee be treated as a covered employee). Note, however, that employees who had been properly classified as covered employees in any

prior taxable year would continue to be covered employees.

This rule also addresses concerns commenters expressed regarding situations in which the ATEO (and its related organizations) may not provide an employee a salary or monetary compensation but may provide other nontaxable benefits. The Treasury Department and the IRS note that benefits excluded from gross income are not considered remuneration, including expense allowances and reimbursements under an accountable plan (see § 1.62–2) and most insurance for liability arising from service with an ATEO, such as directors and officers liability insurance (see § 1.132–5(r)(3)). The Treasury Department and the IRS request comments on whether certain taxable benefits, such as employer-provided parking in excess of the value excluded under section 132, should be disregarded for purposes of determining whether an individual receives remuneration for services for this purpose and, if so, what standards should apply to identify those benefits.

Several commenters suggested that an employee who works for an ATEO for a small percentage of the employee's total hours worked for the ATEO and all its related organizations should be disregarded for purposes of determining that ATEO's five highest-compensated employees. To accommodate those situations in which an employee of a related non-ATEO provides limited services as an employee of the ATEO without any payment of compensation by the ATEO, these proposed regulations also provide a ''limited-hours'' exception for purposes of determining the five highest-compensated employees of the ATEO. Under this exception, an employee of an ATEO is disregarded for purposes of determining the ATEO's five highest-compensated employees for a taxable year if neither the ATEO nor any related ATEO pays remuneration or grants a legally binding right to nonvested remuneration to the employee for services performed for the ATEO and the employee performs only limited services for the ATEO. For purposes of the requirement that an employee not be paid remuneration by the ATEO, the ATEO is not deemed to pay remuneration for services performed for the ATEO that is paid by a related organization that also employs the individual, so long as the ATEO does not reimburse the payor and is not treated as paying remuneration paid by a related organization for services performed for the related organization (although, as discussed in section III.A of this preamble, titled ''In General,'' for other purposes, this remuneration generally is treated as paid by the ATEO).

In addition, an employee qualifies for this exception only if the hours of service the employee performs as an employee of the ATEO comprise 10 percent or less of the employee's total hours of service for the ATEO and all related organizations during the applicable year. For example, an employee of an ATEO and a related organization who works on average 10 hours per month as an employee of the ATEO (or 120 hours for the applicable year) and works on average 165 hours per month as an employee of the related organization (or 1,980 hours for the applicable year) is not counted among the ATEO's five highest-compensated employees for the taxable year, regardless of the amount of the employee's total remuneration, provided the ATEO does not pay the employee any remuneration. In addition, these proposed regulations provide a safe harbor under which an employee who performs fewer than 100 hours of services as an employee of an ATEO (and all related ATEOs) during an applicable year is treated as having worked less than 10 percent of the employee's total hours for the ATEO (and all related ATEOs).

Commenters have raised concerns that an employee of a taxable organization who performs more significant services for a related ATEO as an employee of the ATEO, but with no remuneration paid by the ATEO, may be treated as one of the ATEO's five highest-compensated employees solely based on the remuneration the employee receives from his or her regular, permanent employment with the related taxable organization. The Treasury Department and the IRS understand that the common practice of a taxable organization donating services of their employees to a related ATEO, without the ATEO incurring any expense for these services, is often premised on a desire to assist the ATEO in furthering its exempt purposes without the ATEO inadvertently paying compensation that may be subject to excise tax under sections 4941, 4945, or 4958. Furthermore, in these situations, the ATEO is not expending any of its funds for the employee's services. Regarding the reason for enacting section 4960, the House Report referenced payment of excessive compensation using tax-exempt funds, as well as aligning the tax treatment between for-profit and tax-exempt employers. Specifically, the House Report provided:

> The Committee believes that tax-exempt organizations enjoy a tax subsidy from the Federal government because contributions to such organizations generally are deductible and such organizations generally are not subject to tax (except on unrelated business income). As a result, such organizations are subject to the requirement that they use their resources for specific purposes, and the Committee believes that excessive compensation (including excessive severance packages) paid to senior executives of such organizations diverts resources from those particular purposes. The Committee further believes that alignment of the tax treatment of excessive executive compensation (as top executives may inappropriately divert organizational resources into excessive compensation) between for-profit and tax-exempt employers furthers the Committee's larger tax reform effort of making the system fairer for all businesses.

H. Rep. 115–409, 115th Cong., 1st Sess. 333 (Nov. 13, 2017). Accordingly, these proposed regulations also provide a ''nonexempt funds'' exception for employees of controlling taxable organizations that perform more substantial services as an employee of the ATEO under certain circumstances.

Under the nonexempt funds exception, an employee is disregarded for purposes of determining an ATEO's five highest-compensated employees for a taxable year if neither the ATEO, nor any related ATEO, nor any taxable related organization controlled by the ATEO pays the employee of the ATEO any remuneration for services performed for the ATEO or grants a legally binding right to nonvested remuneration to the employee. As under the limited hours exception, for purposes of the requirement that an employee not be paid remuneration by the ATEO, the ATEO is not deemed to pay remuneration that is paid by a related organization that also employs the individual, so long as the ATEO does not reimburse the payor and is not treated as paying remuneration paid by a related organization for services performed for the related organization. In addition, to prevent indirect payment of remuneration by the ATEO, related ATEOs, or taxable related organizations controlled by the ATEO, the related taxable organization paying the employee remuneration must not provide services for a fee to the ATEO, related ATEOs, or their controlled taxable related organizations.

Further, the employee must have provided services primarily to the related taxable organization or other non-ATEO (other than a taxable subsidiary of the ATEO) during the applicable year. For purposes of this exception, an employee is treated as having provided services primarily to

the related taxable organization or other non-ATEO (other than a taxable subsidiary of the ATEO) only if the employee provided services to the related non-ATEO for more than 50 percent of the employee's total hours worked for the ATEO and all related organizations (including ATEOs) during the applicable year. For example, an individual who works 40 total hours per week, 15 of which are for an ATEO and 25 of which are for a related taxable organization, would primarily provide services for the related taxable organization. The determination is made for each applicable year, so an employee who provides services full-time for 3 ½ months of an applicable year to an ATEO and the remaining 8 ½ months to the related taxable organization would be considered as providing services primarily to the related taxable organization.

The ''limited services'' exception set forth in Q/A–10(b) of Notice 2019–09 provides that an employee is not one of an ATEO's five highest-compensated employees for a taxable year if, during the applicable year, the ATEO paid less than 10 percent of the employee's total remuneration during the applicable year for services performed as an employee of the ATEO and all related organizations. However, if an employee would not be treated as one of the five highest-compensated employees of any ATEO in an ATEO's group of related organizations because no ATEO in the group paid at least 10 percent of the total remuneration paid by the group during the applicable year, then this exception does not apply to the ATEO that paid the employee the most remuneration during that applicable year. These proposed regulations adopt a substantially similar rule that has been modified to simplify the structure of the exception and to clarify that the exception does not apply if the ATEO has no related ATEOs.

Several other comments were received relating to the issue of employees of a non-ATEO providing temporary or limited services to a related ATEO. Several commenters suggested that ''volunteers'' should be excluded from the definition of ''employee.'' The term ''employee'' for Federal tax purposes generally is understood to refer to a common-law employee. Whether a service provider is a common-law employee generally turns on whether the service recipient has the right to direct and control the service provider, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. See, *e.g.,* § 31.3121(d)–1(c)(2). The determination does not depend on whether or how the individual is compensated or by which person. The Treasury Department and the IRS do not adopt the suggestion to modify the common-law standard for determining employee status solely for purposes of section 4960 or to use a definition other than the common law standard. Nonetheless, the limited hours and nonexempt funds exceptions provided in these proposed regulations exclude certain employees that some may view as ''volunteers'' from status as one of an ATEO's five highest-compensated employees, and, as discussed in section II.C. of this preamble, titled ''Employee,'' these proposed regulations exclude certain ''volunteer'' officers, consistent with employment tax regulations.

A commenter suggested that the definition of ''employee'' under Notice 2019–09 be modified so that officer status is not presumptive of common-law employee status. Another commenter suggested that officers who are not paid directly by the ATEO and who perform only minor services for the ATEO be excluded either from the definition of ''employee'' or from the five highest-compensated employees. Under section 4960(c)(3)(A), whether an amount is remuneration generally is based on whether an amount is wages as defined in section 3401(a). Section 31.3401(c)–1(f) provides that an officer generally is treated as an employee, but provides an exception under which an employee of the corporation does not include an officer who performs no services, or performs only minor services, and who neither receives, nor is entitled to receive, any remuneration. Because the definition of ''remuneration'' is tied to the definition of ''wages'' under section 3401(a) and § 31.3401(c)–1(f) provides that officers generally are treated as employees, the Treasury Department and the IRS do not agree that it is appropriate to provide categorically that officers are not employees. However, consistent with § 31.3401(c)–1(f), these proposed regulations define ''employee'' to exclude any officer who as such does not perform any services or performs only minor services and who neither receives, nor is entitled to receive, any remuneration.

A commenter suggested that an exception to the definition of ''employee'' for purposes of section 4960 that would align with the ''volunteer'' exception used for purposes of reporting employee compensation on the Form 990. Under this exception, an employee of a for-profit entity would not be considered an employee of the ATEO if the ATEO does not control the for-profit entity, the for-profit entity does not provide management services for a fee to the ATEO, and the employee provides only ''volunteer'' services to the ATEO (that is, services for which the ATEO pays no compensation to the employee). The Treasury Department and the IRS decline to adopt this approach because the considerations underlying the Form 990 definition of ''employee'' are different than those underlying section 4960. However, the limited hours and nonexempt funds exceptions provided in these proposed regulations are similar to the Form 990 ''volunteer'' exception and will cover many of the same employees.

Commenters suggested that an individual not be treated as one of an ATEO's five highest-compensated employees if the compensation paid directly by the ATEO (regardless of the compensation paid by one or more related organizations) did not meet a certain threshold amount or if the employee did not receive from the ATEO more than a threshold percentage of total compensation from the ATEO and its related organizations. Commenters also suggested that, for purposes of determining an ATEO's five highest-compensated employees, the amount paid to an employee should include only the amount paid by an ATEO (or by an ATEO and related ATEOs) and not by any of its related organizations (or not by any of its related non-ATEOs). The Treasury Department and the IRS do not adopt these suggestions because of concerns that these standards would permit taxpayers to restructure compensation arrangements so that a related organization pays compensation on behalf of an ATEO or break up operations into multiple ATEOs, each paying below the threshold, in order to control the identification of the ATEO's covered employees (and, in particular, would permit taxpayers to ensure that any individuals being paid overall remuneration in excess of $1 million are not identified as covered employees).

Commenters also suggested that, for purposes of determining an ATEO's five highest-compensated employees, the amount paid to an employee should be measured only by reference to compensation paid to the employee for services rendered as an employee of the ATEO (regardless of the payor). The Treasury Department and the IRS do not adopt this suggestion because an arrangement between entities for compensating employees of two or more of the entities may not accurately reflect the relative value of the services an employee provides to each of the

entities. In addition, due to the highly factual nature of the analysis and the potential for differing conclusions, such a rule would not result in a predictable standard for taxpayers or the IRS to apply. However, the limited hours and nonexempt funds exceptions set forth in these proposed regulations are intended to address the concerns of these commenters.

Finally, a commenter suggested that a rule be provided under which an ATEO is permitted to choose one of several permissible methods to determine its five highest-compensated employees. A standard that would permit an ATEO to select among various identification methods would create administrative burdens and complexities not only in implementing that ATEO's election, but also in coordinating among related ATEOs (and their related non-ATEOs) with differing identification methods, applying changes in methods selected by ATEOs, and determining the consequences of corporate transactions involving ATEOs (for example, a merger of two ATEOs using two different identification methods). In addition, the Treasury Department and the IRS anticipate that the definitions of ''employee'' and ''five highest-compensated employees'' in these proposed regulations will address the issues raised by commenters concerning employees of non-ATEOs performing limited or temporary services for a related ATEO. For these reasons, these proposed regulations do not adopt this suggestion. However, the Treasury Department and the IRS continue to invite comments on any modifications to these proposed regulations with respect to identifying an ATEO's five highest-compensated employees that are consistent with the statutory provisions, treat similarly situated taxpayers consistently, do not permit improper avoidance of the provisions, and are administrable and not overly burdensome.

F. Medical Services

Section 4960(c)(3)(B) provides that remuneration for purposes of section 4960 does not include the portion of any remuneration paid to a licensed medical professional (including a veterinarian) that is for the performance of medical or veterinary services by such professional. Section 4960(c)(5)(C)(iii) provides a substantially similar exception from the definition of ''parachute payment.'' Commenters requested clarification of the types of services that for this purpose are medical or veterinary services.

These proposed regulations define ''medical services'' as the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; services provided for the purpose of affecting any structure or function of the human or animal body; and other services integral to providing such medical services, that are directly performed by a licensed medical professional. This standard is consistent with the statement in the Conference Report to TCJA, H. Rept. 115–466, at 494 (2017) that the exception applies only to remuneration ''directly related'' to the performance of medical services (including veterinary services). This standard is based on the definition of ''medical care'' under section 213(d)(1)(A) and § 1.213–1(a), which is a developed area of Federal tax law. Under these proposed regulations, only the remuneration paid by the employer to a licensed medical professional for the actual provision of medical services (or administrative tasks integral to such services) is disregarded for purposes of determining the amount of remuneration paid to the licensed medical professional for the applicable year (and the amount of any parachute payment under section 4960(c)(5)(C)(iii)). The proposed regulations provide that certain administrative tasks, such as creating patient records, are so integral to performing medical services that they constitute the performance of medical services. Further, the proposed regulations provide that, for purposes of section 4960, remuneration paid to a licensed medical professional for teaching or research services does not qualify for the exclusion from remuneration under section 4960(b)(3)(B) (or the exclusion from amounts treated as a parachute payment under section 4960(c)(5)(C)(iii)) except to the extent those services constitute medical services.

The Conference Report to TCJA states that ''[a] medical professional for this purpose includes a doctor, nurse, or veterinarian.'' H. Rept. 115–466, at 494 (2017). To further clarify the standard, these proposed regulations provide that a ''licensed medical professional'' is an individual who is licensed under state or local law to perform medical services. In addition to doctors, nurses, and veterinarians, as listed in the legislative history, a licensed medical professional generally would include dentists and nurse practitioners and may include other medical professionals, depending on the applicable state or local law.

For a discussion of other issues related to remuneration for medical or veterinary services, including a proposed rule for allocating remuneration received for a combination of medical and non-medical services, see part III of this preamble, titled ''Remuneration.''

G. Predecessor Organization

Section 4960(c)(2)(B) provides that a covered employee includes any employee who was a covered employee of the ATEO (or any predecessor) for any preceding taxable year beginning after December 31, 2016. Because, under section 4960(c)(2), a covered employee must be (or have been) an employee of an ATEO, the predecessor must also have been an ATEO. Thus, an individual who is a covered employee of an ATEO (or of an ATEO predecessor of an ATEO) for one taxable year remains a covered employee of that ATEO (and any successor ATEOs) for subsequent taxable years.

These proposed regulations define ''predecessor'' by reference to several enumerated categories of organizational changes, including acquisitions, mergers, other reorganizations, and changes in tax-exempt status. A predecessor ATEO ordinarily is an ATEO that has transferred, by any of several legal means, its assets and operations to another pre-existing or newly created ATEO (the successor of the predecessor ATEO). This definition generally is consistent with the proposed regulations under section 162(m), 84 FR 70356 (December 20, 2019), with certain differences discussed in this section of the preamble. Section 162(m)(1) disallows a deduction for compensation in excess of $1 million paid by publicly-held corporations to certain executive officers, and the proposed regulations under section 162(m) define certain similar terms, including predecessor organization.

These proposed regulations provide that if an acquiror ATEO acquires at least 80 percent of the operating assets or total assets (determined by fair market value on the date of acquisition) of a target ATEO, then the target ATEO is a predecessor of the acquiror ATEO (the 80 percent asset transfer rule). However, the proposed regulations provide that only the target ATEO's covered employees that commence the performance of services for the acquiror ATEO (or an organization related to the acquiror) during the period beginning 12 months before and ending 12 months after the date on which all events necessary for the acquisition have occurred become the acquiror ATEO's covered employees (the 24-month services rule). For acquisitions of assets that occur over time, these proposed regulations generally provide that only acquisitions that occur within a twelve-

month period are taken into account for purposes of applying the 80 percent asset transfer rule, though the period is extended during any period in which there is a plan to acquire the target's assets. The acquisition may be by gift or for bona fide consideration.

The 24-month services rule differs from the corresponding rule in the proposed regulations under section 162(m) in that for section 162(m), the proposed rule relates to hiring by the publicly held corporation (including its affiliated group), whereas the rule in these proposed regulations relates to hiring by an ATEO or any related organization. This difference reflects a structural difference in the two statutes, but the two rules are meant to have substantively similar effects.

These proposed regulations provide that a predecessor of an acquiror ATEO includes an ATEO that is acquired (target), or the assets of which are acquired, by another ATEO (acquiror) in most corporate reorganization transactions defined in section 368. Accordingly, the covered employees of a target are also covered employees of the acquiror. For nonprofit corporations, such reorganizations would commonly include mergers described in section 368(a)(1)(A). These proposed regulations also treat as a predecessor an organization that merely changes its form or place of organization as described in section 368(a)(1)(F).

The categories of organizational changes in these proposed regulations resulting in a predecessor and a successor are not mutually exclusive. For example, these proposed regulations treat a restructuring ATEO that changes its organizational form or place of organization as a predecessor of the surviving organization. Many or most such transactions, though not all, result in the same treatment under one or more of the 80 percent asset transfer rule, section 368(a)(1)(F), or Rev. Proc. 2018–15, 2018–9 I.R.B. 378.[2]

ATEOs generally are defined as organizations exempt from tax under one of several Code sections. For purposes of section 4960(c)(2)(B), an ATEO may be a predecessor of itself due to its moving in and out of status as an ATEO. Specifically, these proposed regulations provide that a predecessor of an ATEO includes an ATEO that, after ceasing to be an ATEO, again becomes an ATEO effective for a taxable year (or part of the taxable year) ending before the date that is 36 months following the due date (disregarding any extensions) for the filing of the ATEO's information return under section 6033, such as Form 990 (or Federal income tax return in the case of section 115 instrumentalities or section 521 farmers' cooperatives), for the most recent taxable year during which the organization was an ATEO. The 36-month limitation is included for reasons similar to those underlying the proposed definition of ''predecessor'' for purposes of section 162(m)(3)(C). See Prop. § 1.162–33(c)(2)(ii)(C) and (H). These proposed regulations also provide that a predecessor of an ATEO includes any predecessor of its predecessor (thus, there may be a chain of predecessors).

ATEOs, which are defined in section 4960(c)(1), differ in their organizational structures and basis for tax exemption and in the types of reorganizational changes that they may undergo. For instance, predecessor rules involving transfers of stock generally will apply only to a limited class of ATEOs because ATEOs generally are not stock corporations. These proposed regulations specify that, in the case of an election to treat as an asset purchase either the sale, exchange, or distribution of stock pursuant to regulations under section 336(e) or the purchase of stock pursuant to regulations under section 338, the ATEO is treated as the same organization before and after the transaction for which the election is made. Comments are requested on the application of these rules to ATEOs and whether any other types of transactions involving ATEOs should be analyzed to determine if the predecessor rules do or should apply.

H. Related Organization

Section 4960(c)(4)(A) provides that remuneration paid to a covered employee by an ATEO includes any remuneration paid with respect to employment of the employee by any related person or governmental entity.[3] Similar to the comment that only remuneration paid by the ATEO or related ATEO should be considered for purposes of determining an ATEO's five highest-compensated employees (described in paragraph II.E.1. of this preamble, titled ''In General''), one commenter requested that, for purposes of applying the definition of ''remuneration,'' the phrase ''any related person or governmental entity'' be limited to the employer ATEO and any related ATEOs, but not any related non-ATEOs. Because section 4960(c)(4)(B) does not include this limitation in the definition of a ''related organization,'' these proposed regulations do not adopt this suggestion. Rather, these proposed regulations include in the definition of ''remuneration'' any remuneration paid by the employer ATEO, related ATEOs, and related non-ATEOs (including for-profit entities, nonprofit entities that are not ATEOs, and governmental entities that are not ATEOs).

Section 4960(c)(4) does not provide a definition of ''control'' for purposes of identifying related organizations. For purposes of defining ''control'' within the meaning of section 4960(c)(4)(B)(i) and (ii), two commenters suggested using the control standard under § 1.414(c)–5, with one of the commenters suggesting replacement of the ''at least 80 percent'' standard with a ''more than 50 percent'' standard to align with the Form 990 instructions. Such a standard is similar to the definition of ''control'' under section 512(b)(13)(D).

Consistent with Notice 2019–09, Q/A–8, for this purpose, these proposed regulations generally utilize the definition of ''control'' set forth in section 512(b)(13)(D) and § 1.512(b)–1(l)(4). That standard (and its ''greater than 50 percent'' threshold) generally aligns the definition of ''related organization'' for purposes of section 4960 with the definition of ''related organization'' for purposes of the annual reporting requirements on Form 990, reducing the burden on organizations in identifying related organizations, calculating compensation and remuneration from related organizations, and determining liability (if any) under section 4960. Use of a ''greater than 50 percent'' standard also aligns more closely with other exempt organization control tests and prevents abuse that may occur in the section 4960 context if a higher percentage threshold for control were adopted.

Following the standard in section 512(b)(13)(D), these proposed regulations define control of a stock corporation as ownership (by vote or value) of more than 50 percent of its stock, control of a partnership as ownership of more than 50 percent of its profits or capital interests, and control of a trust with beneficial interests as ownership of more than 50 percent of its beneficial interests. Consistent with the rule set forth in section 512(b)(13)(D)(ii), these proposed regulations provide that the attribution rules of section 318 apply in determining constructive or indirect ownership of stock in a stock

[2] Because these proposed regulations essentially treat the covered employees of a predecessor of an ATEO as the covered employees of the ATEO, these proposed regulations do not distinguish between a reorganization of an ATEO in which the restructured organization must re-apply for recognition of exemption and a reorganization in which the restructured organization is still recognized as exempt, such as pursuant to certain changes in form or place of organization.

[3] The proposed regulations refer to related persons and governmental entities collectively as related organizations.

corporation and that similar principles apply in determining constructive or indirect ownership of partnership interests or beneficial interests in a trust. For example, under section 318(a)(1), an individual is considered to own stock owned by the individual's spouse, child, grandchild, or parent. In general, the principles of section 318 are not readily applicable to nonstock organizations, which do not have ownership interests like other entities. However, some of the principles may be applied by analogy (such as proportional ownership under section 318(a)(2)), as set forth in these proposed regulations and examples. Similar rules apply in determining an indirect excess benefit transaction through a controlled entity in § 53.4958–4(a)(2)(ii)(B) for purposes of imposing the excise tax in section 4958 on excess benefit transactions. The Treasury Department and the IRS request comments on other circumstances for which clarifying regulations or examples would be helpful or whether a different standard should be considered.

Since most tax-exempt organizations are nonstock organizations, these proposed regulations also set forth a rule of ''control'' in the context of nonstock organizations to determine if the nonstock organization is a related organization. For this purpose, the proposed regulations define a ''nonstock organization'' as a nonprofit organization or other organization without owners, including a governmental entity. Similar to several other provisions and regulations dealing with controlled tax-exempt organizations (§ 1.512(b)–1(l)(4)(i)(b), § 53.4958–4(a)(2)(ii)(B)(1)(iii), and § 1.414(c)–5(b)),[4] these proposed regulations provide that a person controls a nonstock organization under either a ''removal power'' test or a ''representative'' test.

Under the removal power test, a person controls a nonstock organization if the person has the power, directly or indirectly, to remove more than 50 percent of the trustees or directors of the nonstock organization and designate new trustees or directors. These proposed regulations specify that power to remove at regular intervals (for example, at the end of a board member's term of years) is sufficient for removal power to exist.

Under the representative test, a person or governmental entity generally controls a nonstock organization if more than 50 percent of the nonstock organization's directors or trustees are also trustees, directors, officers, agents, or employees of the person or governmental entity. Unlike the representative test in § 1.512(b)–1(l)(4)(i)(b), § 53.4958–4(a)(2)(ii)(B)(1)(iii), and § 1.414(c)–5(b), these proposed regulations expressly include an officer of the person or governmental entity as a representative for purposes of determining control of the nonstock organization.

One commenter suggested the representative test is overbroad, resulting in deemed control by the person because of the person's mere capacity to influence the nonstock organization, even if the person has no intent or interest in doing so, and even if the person has no knowledge of the nonstock organization (a phenomenon referred to here as ''accidental control''). For example, according to the commenter, the representative test could unintentionally include an employer as a controlling person of an ATEO that two of the employer's employees established well before they became employees of the employer.

The representative test has an established history in tax law relating to tax-exempt organizations, appearing with minor variations in § 1.512(b)–1(l)(4)(i)(b), section 4911(f)(2)(B)(i), § 53.4958–4(a)(2)(ii)(B)(1)(iii), § 1.414(c)–5(b), and the instructions to the Form 990 (for 2008 and subsequent years) defining ''related organizations.'' The test may result in accidental control in some situations but is designed as a bright-line rule to avoid disputes over intent. However, to address the issue raised by the commenter, these proposed regulations permit a nonstock organization (or its putative controlling person or governmental entity) to qualify for an exception from control status if a director or trustee of the nonstock organization who is also a lower-level employee of the person or governmental entity (that is, not a trustee, director, or officer, or employee with the powers of a director or officer, of the person or governmental entity) is not acting as a representative of the person or governmental entity in his or her service with the nonstock organization. A nonstock organization that is relying on this exception must report that it is relying on the exception on the applicable Form 990 and provide details supporting the application of the exception.

*III. Remuneration*

A. In General

Consistent with section 4960(c)(3)(A), these proposed regulations define ''remuneration'' as wages under section 3401(a) (amounts generally subject to Federal income tax withholding), but excluding designated Roth contributions under section 402A(c) and including amounts required to be included in gross income under section 457(f). Remuneration does not include certain retirement benefits, including payments: That are contributions to or distributions from a trust described in section 401(a); under or to an annuity plan which, at the time of the payment, is a plan described in section 403(a); described in section 402(h)(1) and (2) if, at the time of the payment, it is reasonable to believe that the employee will be entitled to an exclusion under that section for the payment; under an arrangement to which section 408(p) applies; or under or to an eligible deferred compensation plan which, at the time of the payment, is a plan described in section 457(b) that is maintained by an eligible employer described in section 457(e)(1)(A) (governmental employer). See section 3401(a)(12). Remuneration also does not include an excess parachute payment but does include a parachute payment that is not an excess parachute payment.

In addition, these proposed regulations include in remuneration any amounts includible in gross income as compensation under section 7872 and related regulations. For example, under § 1.7872–15(e)(1)(i), a below-market split-dollar loan between an employer and employee generally is a compensation-related loan and any imputed transfer from the employer to the employee generally is a payment of compensation. Although section 7872(f)(9) provides that no amount shall be withheld under Chapter 24 of the Code with respect to any amount treated as transferred or retransferred under section 7872(a) or received under section 7872(b), those amounts are ''remuneration . . . for services performed by an employee for his employer'' within the meaning of section 3401(a) and are not specifically excluded from wages under section 3401(a). Thus, these amounts are remuneration as defined in section 4960(c)(3)(A). This analysis applies by analogy to other remuneration for services performed by an employee that is included in wages under section 3401(a) but is nonetheless not subject to income tax withholding under section 3402.

One commenter requested that remuneration be read to include amounts paid by any related person or governmental entity only with respect to employment of the employee by the ATEO and not with respect to

[4] See also the representative test in section 4911(f)(2)(B)(i) for determining affiliated organizations.

employment of the employee by the related person or government entity. Neither the statute nor the legislative history indicates that this was the intended reading. In defining ''remuneration,'' section 4960(c)(4)(A) provides that ''remuneration of a covered employee by an [ATEO] shall include any remuneration paid with respect to employment of the employee by any related person or governmental entity.'' In addition, the legislative history indicates an intent to align the tax treatment of certain executive compensation payments made by for-profit employers and tax-exempt employers. The commenter's reading would be inconsistent with this intent, since section 162(m)(1) requires aggregation of amounts paid and proration of the resulting amount disallowed as a deduction if a covered employee of one member of an affiliated group is paid compensation by other members of the affiliated group. See § 1.162–27(c)(1)(ii) and Prop. § 1.162–33(c)(1)(ii). For these reasons, these proposed regulations do not limit the application of section 4960(c)(4)(A) to remuneration paid solely with respect to employment by the ATEO or for services rendered to the ATEO.

B. Remuneration Related to Medical Services

Remuneration that is paid to a licensed medical professional for medical services is excluded from the definition of ''remuneration'' for purposes of section 4960. (See part II.F. of this preamble, titled ''Medical Services'' for a further discussion of the scope of this exception.) When an employer compensates an employee for both medical services (including related services, such as medical recordkeeping) and other services, the employer must allocate remuneration paid to the employee between remuneration paid for medical services and remuneration paid for other services. These proposed regulations permit taxpayers to use a reasonable, good faith method to allocate remuneration between these two categories of services. For this purpose, taxpayers may rely on a reasonable allocation set forth in an employment agreement allocating remuneration between medical services and other services. If some or all of the remuneration is not reasonably allocated in an employment agreement, taxpayers must use another reasonable method of allocation. For example, allocating remuneration to medical services in the proportion that time spent providing medical services (determined based on records such as patient, insurance, Medicare/Medicaid billing records, or internal time reporting mechanisms) bears to the total hours the covered employee worked for the employer (including hours worked as an employee for all employers in a related group of organizations) would be a reasonable method. The Treasury Department and the IRS request comments providing examples of other reasonable methods of allocating remuneration between medical services and other services (or reasonable methods in particular circumstances).

C. When Remuneration Is Treated as Paid

These proposed regulations address when remuneration is treated as paid for purposes of section 4960. The flush language at the end of section 4960(a) provides that, for purposes of section 4960(a), remuneration is treated as paid when there is no substantial risk of forfeiture of the rights to the remuneration within the meaning of section 457(f)(3)(B). Although section 4960(a) cross-references the definition of ''substantial risk of forfeiture'' in section 457(f)(3)(B), the rule under section 4960(a) providing that remuneration is treated as paid upon when there is no substantial risk of forfeiture of the rights to the remuneration is neither limited to remuneration that is otherwise subject to section 457(f) nor limited to amounts paid pursuant to a nonqualified deferred compensation arrangement. Rather, for purposes of section 4960(a), this timing rule applies to all forms of remuneration.

To make clear when remuneration that is never subject to a substantial risk of forfeiture is treated as paid, these proposed regulations provide that remuneration that is a ''regular wage'' within the meaning of § 31.3402(g)–1(a)(ii) is treated as paid at actual or constructive payment. A ''regular wage'' is defined in § 31.3402(g)–1(a)(ii) as remuneration ''paid at a regular hourly, daily, or similar periodic rate (and not an overtime rate) for the current payroll period or at a predetermined fixed determinable amount for the current payroll period.'' Remuneration that is not a regular wage but that is never subject to a substantial risk of forfeiture is treated as paid on the first date the service provider has a legally binding right to the payment.

With respect to payments that are at some time subject to a substantial risk of forfeiture, these proposed regulations refer to remuneration as ''vested'' when it is no longer subject to a substantial risk of forfeiture, and this remuneration is treated as paid when it vests. The Treasury Department and the IRS issued proposed regulations under section 457(f) in 2016 (81 FR 40548 (June 22, 2016)), upon which taxpayers may rely for periods before they are finalized. Under proposed § 1.457–12(e)(1), an amount of compensation is subject to a substantial risk of forfeiture only if entitlement to the amount is conditioned on the future performance of substantial services, or upon the occurrence of a condition that is related to a purpose of the compensation if the possibility of forfeiture is substantial. See Prop. § 1.457–12(e)(3) for examples of the rules relating to substantial risk forfeiture. The Treasury Department and the IRS anticipate that the final regulations under section 4960 will adopt the definition of ''substantial risk of forfeiture'' in proposed § 1.457–12(e)(1). Any changes to the proposed regulations under section 457(f) when finalized will be taken into account for purposes of section 4960, and further guidance may be issued, if appropriate.

Although requested by commenters, these proposed regulations do not provide a short-term deferral rule (such as the rules provided in § 1.409A–1(b)(4) and proposed § 1.457–12(d)(2)) that would change the date remuneration is treated as paid depending on the timing of vesting in relation to the timing of actual payment (typically of cash) to the employee. Allowing a short-term deferral similar to that allowed in § 1.409A–1(b)(4) and proposed § 1.457–(12)(d)(2) would permit the employer to determine the taxable year in which the amount is treated as paid and would be inconsistent with the statute. The Treasury Department and the IRS are concerned that providing this type of exception to the timing rule under section 4960 would permit ATEOs and related organizations to spread remuneration across multiple applicable years by delaying actual payment of an amount that is already vested and thus potentially avoid the tax. However, the Treasury Department and the IRS invite comments regarding any burdens that could be avoided through a short-term deferral rule and how such a rule could be designed to avoid permitting inappropriate avoidance of the tax.

While a short-term deferral exception might allow an employer to choose the taxable year in which a payment is made in order to avoid the excise tax, the Treasury Department and the IRS understand that for routine salary and other similar payments made for the final pay period of a calendar year, most employers do not distinguish between the amounts earned in the initial year and the amounts earned in the

subsequent year that are both paid in the subsequent year. Because these regulations provide that remuneration that is a regular wage within the meaning of § 31.3402(g)–1(a)(1)(ii) is treated as paid when actually or constructively paid, the employer will not need to determine amounts that vested in the initial year for purposes of section 4960. Thus, if a pay period ends December 26, 2020, but the salary for that period is not actually paid until January 2, 2021, then the salary is treated as paid in 2021 and the employer need not treat any amount as vested in 2020. But if the employee also vested in a bonus on December 26, 2020, that is actually paid on January 2, 2021, the bonus is treated as paid in 2020.

These proposed regulations provide that the amount of remuneration treated as paid generally is the present value of the remuneration on the date on which the covered employee vests in the right to payment of the remuneration. The employer must determine the present value using reasonable actuarial assumptions regarding the amount, time, and probability that the payment will be made. These proposed regulations do not provide rules for the determination of present value. However, an employer may determine the present value using the rules set forth in proposed § 1.457–12(c)(1). The Treasury Department and the IRS anticipate that final regulations covering the determination of present value for purposes of section 4960 will be issued when final regulations under section 457(f) are issued. In addition, to reduce the administrative burden for determining the present value of remuneration under a nonaccount balance plan described in § 1.409A–1(c)(2)(i)(C) scheduled to be paid within 90 days after vesting (which would result in minimal discounting), the employer may treat the amount that is to be paid as the present value of the amount on the date of vesting. For example, an employer is not required to discount an annual bonus of $10,000 that vests on December 31, 2020, and is scheduled to be paid on February 15, 2021, to reflect the delay in actual payment, but instead may treat $10,000 of remuneration as paid in 2020. Until actually or constructively paid or otherwise includible in gross income of the employee, any amount treated as paid at vesting is referred to as ''previously paid remuneration.''

D. Earnings and Losses

These proposed regulations provide specific rules for the treatment of earnings and losses on previously paid remuneration, intended to minimize administrative burden. These proposed regulations provide that net earnings on previously paid remuneration are treated as vested (and therefore paid) on the last day of the applicable year in which they are accrued unless otherwise actually or constructively paid before that date. For example, the present value of vested remuneration accrued to an employee's account under an account balance plan described in § 1.409A–1(c)(2)(i)(A) (under which the earnings and losses attributed to the account are based solely on a predetermined actual investment or a reasonable market interest rate) is treated as paid on the date accrued to the employee's account and, until subsequently actually or constructively paid, is treated as previously paid remuneration. In addition, at the end of each applicable year in which there is this type of previously paid remuneration allocable to a covered employee, the present value of any net earnings accrued on that previously paid remuneration (the increase in present value due to the application of a predetermined actual investment or a reasonable market interest rate) is treated as remuneration paid in that applicable year.[5]

Similarly, the present value of a vested, fixed amount of remuneration under a nonaccount balance plan described in § 1.409A–1(c)(2)(i)(C) is treated as paid on the date of vesting and subsequently treated as previously paid remuneration until actually or constructively paid. In addition, at the end of each applicable year in which there is this type of previously paid remuneration allocable to a covered employee, the net increase in the present value of that amount during the year due solely to the passage of time constitutes earnings and is treated as remuneration paid. For this purpose, earnings and losses from one plan or arrangement are aggregated with earnings and losses from any other plan or arrangement in which the employee participates that is provided by the same employer, resulting in an individual amount of remuneration paid by each employer and separate carryover of any net losses (but no carryover of gains, since any net gain would be treated as remuneration for the taxable year). For purposes of determining earnings and losses, previously paid remuneration is reduced by the amount actually or constructively paid under the plan or arrangement granting the rights to such remuneration. These proposed regulations further illustrate the operation of these rules through examples.

E. Request for a Grandfather Rule

Commenters requested a ''grandfather'' rule for section 4960 similar to the grandfather rule under section 13601 of TCJA, which amended section 162(m). Section 13601(e) of TCJA provides that the amendments to section 162(m) are effective for taxable years beginning after December 31, 2017, unless remuneration is provided pursuant to a written binding contract that was in effect on November 2, 2017, and that was not modified in any material respect on or after December 31, 2017. Section 13602(c) of TCJA added section 4960 to the Code, but it did not provide for a grandfather rule and there is no indication in the legislative history that Congress intended to adopt one. In addition, notwithstanding the suggestion of one commenter, the Treasury Department and the IRS do not agree that the regulatory authority provided in section 4960(d) to prevent avoidance of the tax is applicable to the adoption of a grandfather rule. A rule permitting the exclusion of certain amounts from remuneration would not prevent taxpayer abuse of failing to report and pay the applicable tax. Accordingly, these proposed regulations do not provide a grandfather rule.

However, these proposed regulations provide rules that have the effect of grandfathering certain compensation. The proposed regulations provide that any nonqualified deferred compensation that vested prior to the first day of the first taxable year of the ATEO beginning after December 31, 2017, is not considered remuneration for purposes of section 4960. Specifically, these proposed regulations provide that any vested remuneration, including vested but unpaid earnings accrued on deferred amounts, that is treated as paid before the effective date of section 4960 (January 1, 2018, for a calendar year employer) is not subject to the excise tax imposed under section 4960(a)(1). All earnings on that remuneration that accrue or vest after the effective date, however, are treated as remuneration paid for purposes of section 4960(a)(1).

Similarly, for an employee who has vested deferred compensation from years prior to the taxable year in which the employee first became a covered employee, these proposed regulations provide that vested remuneration (including vested but unpaid earnings) that would have been treated as remuneration paid for a taxable year

[5] This remuneration is then treated as previously paid remuneration for subsequent applicable years until actually or constructively paid.

before the taxable year in which an employee first became a covered employee under section 4960 is not remuneration subject to the excise tax imposed by section 4960(a)(1) for the first taxable year in which the employee becomes a covered employee or any subsequent year. However, subsequent earnings that accrue on those vested amounts while the employee is a covered employee may be subject to the excise tax imposed under section 4960(a)(1).

One commenter requested that, for determining when remuneration is paid for purposes of section 4960, taxpayers be permitted to allocate ratably over the vesting period benefit amounts accruing under section 457(f) plans and subject to ''cliff vesting'' (generally referring to amounts accruing based on services performed over a period of time with the right to the entire amount vesting only at the end of that period). The commenter reasoned that the vesting period may span many years (including years prior to the date that section 4960 first applies to the employer) and therefore only the amount accrued for each year, regardless of whether it is vested, should be treated as paid for purposes of section 4960. Additionally, the commenter observed that treating amounts that cliff vest as paid at vesting increases the likelihood that remuneration treated as paid to the employee will exceed the $1 million threshold for that taxable year. Nonetheless, because the flush language of section 4960(a) provides explicitly that remuneration is treated as paid at vesting as determined under section 457(f)(3)(B) and there is nothing in section 457(f)(3)(B) that would permit such a ratable allocation rule, this suggestion is not incorporated into these proposed regulations.

One commenter requested relief from sections 409A and 457(f) so that affected taxpayers can delay vesting or payment of amounts that, as of November 2, 2017, were subject to a legally binding obligation to be paid in the future, to the extent necessary to avoid application of section 4960. Because the timing of payment of remuneration under section 4960 is based on the vesting date, the delay in an actual or constructive payment date generally will not affect when that remuneration is treated as paid for purposes of section 4960. However, an extension of a vesting period may have consequences both with respect to when remuneration is treated as paid under section 4960 and under section 457(f) and section 409A. The regulations under section 409A and the proposed regulations under section 457(f) impose limitations on the extension of the vesting period applicable to deferrals of compensation. Under those rules, in general, an amount will not be considered subject to a substantial risk of forfeiture beyond the date or time at which the recipient otherwise could have elected to receive the amount of compensation, unless the present value of the amount subject to a substantial risk of forfeiture is materially greater than the present value of the amount the recipient otherwise could have elected to receive absent such risk of forfeiture. See § 1.409A–1(d)(1) and proposed § 1.457–12(e)(2). With respect to section 4960, the statute does not provide for a grandfathering rule or otherwise provide an exception to the application of section 457(f)(3)(A) and its definition of a ''substantial risk of forfeiture'' for purposes of determining the timing of payments. In addition, it is not appropriate to waive the otherwise applicable definition of ''substantial risk of forfeiture,'' which only recognizes extensions of vesting periods for which there is a rational economic basis (disregarding tax consequences) for purposes of section 4960. Accordingly, these proposed regulations do not adopt this suggestion.

F. Remuneration Paid to a Covered Employee for Which a Deduction Is Disallowed Under Section 162(m)

Consistent with section 4960(c)(6), these proposed regulations provide that remuneration for which a deduction is disallowed under section 162(m) is not treated as remuneration paid to a covered employee. Thus, remuneration that is paid to a covered employee of an ATEO who is also a covered employee of a related ''publicly held corporation'' or an applicable individual of a related ''covered health insurance provider'' (as defined in section 162(m)(2) and (m)(6)(C), respectively), for which a deduction is disallowed under section 162(m), generally is not treated as remuneration for purposes of section 4960 However, that remuneration is taken into account for purposes of determining the ATEO's five highest-compensated employees. See section II.E.1. of this preamble, titled ''In General.''

In some circumstances, it may not be known at the time remuneration is treated as paid to a covered employee of the ATEO whether a deduction for such remuneration will be disallowed under section 162(m). For example, for purposes of section 4960(a)(1), nonqualified deferred compensation is treated as remuneration paid when the right to it vests (see section III.C of this preamble, titled ''When Remuneration is Treated as Paid''). Whether a deduction for payment of the compensation would be precluded by section 162(m) may not be known until a subsequent taxable year, since the timing of an employer's otherwise available deduction for a payment of deferred compensation is delayed until the amount is includible in the employee's gross income, which is generally when the amount is actually or constructively paid to the employee.

A second example includes the situation in which a covered employee of an ATEO becomes a covered employee of a related publicly held corporation or an applicable individual of a related covered health insurance provider after the taxable year for which an amount has been treated as excess remuneration under section 4960(a), but before the taxable year in which the remuneration is deductible (subject to the disallowance under section 162(m)). This may occur because, at the time the remuneration is treated as paid, the covered employee of the ATEO did not meet the definition of ''covered employee'' under section 162(m)(3) or ''applicable individual'' under section 162(m)(6)(F) or because the related organization did not meet the definition of ''publicly held corporation'' under section 162(m)(2) or ''covered health insurance provider'' under section 162(m)(6)(C). Further, the present value of a future payment that is contingent on a separation from employment may be taken into account for purposes of determining whether an excess parachute payment is made, but when the payment is made in a subsequent taxable year, the corresponding deduction may be disallowed under section 162(m). (See section IV. of this preamble, titled Excess Parachute Payments). In these circumstances if, after including an amount in remuneration under section 4960, it is determined that section 162(m) disallows a deduction for that remuneration for a subsequent taxable year, a taxpayer may file a refund claim for the excise tax paid as a result of including the amount in remuneration, provided the period for making a refund claim has not expired.

In certain circumstances, however, it may not be known until after the period for making a refund claim has expired whether an amount that has been treated as excess remuneration is subject to the deduction disallowance under section 162(m). These proposed regulations do not address the coordination of sections 4960 and 162(m) in these circumstances, but instead this preamble describes possible approaches for future regulations coordinating these provisions and requests comments.

One possible approach is to permit the employer to exclude an amount from remuneration if the amount may reasonably be expected to be disallowed as a deduction under section 162(m) for a subsequent taxable year. Under this approach, for purposes of determining whether it is reasonably expected that an amount will be disallowed under section 162(m), the employer would be required to assume that remuneration is paid pursuant to the terms of the plan or arrangement under which the compensation is deferred, as in effect on the last day of the taxable year for which the amount is treated as remuneration paid. The Treasury Department and the IRS anticipate that this approach would permit this assumption only with respect to an organization that was a publicly held corporation or covered health insurance provider at the time the remuneration was treated as paid for purposes of section 4960 and only with respect to an employee that for that taxable year was a covered employee or applicable individual under section 162(m). In other words, the organization could not assume either that it would become a publicly held corporation or covered health insurance provider by the time the amount became deductible but for the application of section 162(m) or that an individual who was not a covered employee or applicable individual under section 162(m) would become one by the time the amount became deductible but for the application of section 162(m). The Treasury Department and the IRS request comments on this approach, including:

- Whether it should be assumed that no other remuneration will be paid to the covered employee in the year the amount is otherwise deductible but for section 162(m) and, if not, how to account for other payments subject to section 162(m). For example, how to address ordering of payments subject to the deduction limitation under section 162(m).
- Whether, in determining when amounts will be paid as part of applying this approach, the potential for payment to be accelerated based on death, disability, change in control, unforeseeable emergencies, or other events outside of the control of the individual should be disregarded.
- Whether this approach should be available when a plan or arrangement provides for different forms of payment and, if so, whether it should be assumed that amounts will be paid in the most rapid form in these circumstances (for example, if a plan may pay either a lump sum or installments depending on the particular payment event, whether it should be assumed that the amount will be paid in a lump sum).
- Whether the assumption provided in proposed § 1.457–12(c)(1)(ii)(C)(*2*), which provides that a separation from employment will occur no later than five years from the vesting date, should be adopted to determine when the deduction limitation under section 162(m) is reasonably expected to apply and, if not, what assumptions should be used with respect to payments due upon separation from employment.
- Whether, in circumstances in which payments are made upon the occurrence of an event other than separation from employment and that payment event has not yet occurred, it is reasonable to assume that the section 162(m) deduction limitation will apply to amounts that are payable upon the occurrence of such a payment event and when such a payment event should be deemed to occur.

Comments are also requested on how to treat an amount that is reasonably determined to be subject to the deduction limitation under section 162(m), but for which the deduction is not subsequently limited. For example, a taxpayer may reasonably determine that the amount that is treated as paid for a taxable year for purposes of section 4960 will exceed the section 162(m) threshold for the taxable year when it is paid, but the amount that is ultimately included in the employee's gross income (together with any other amount that is potentially subject to section 162(m) for the year) may not exceed the 162(m) threshold in that year due to, for example, investment losses.

A second possible approach to address these circumstances is to permit an employer to offset remuneration subject to section 4960 in a later taxable year by an amount equal to the amount that was treated as excess remuneration under section 4960 in a previous taxable year for which the deduction is subsequently disallowed under section 162(m). This approach would only benefit employers that pay excess remuneration in subsequent years.

The Treasury Department and the IRS request comments on these potential approaches, including how each might be offered as an alternative, and any other approach that may be helpful in coordinating sections 4960 and 162(m).

*IV. Excess Remuneration*

In general, the excise tax imposed under section 4960(a)(1) is based on the remuneration paid (other than any excess parachute payment) by an ATEO for the taxable year with respect to employment of any covered employee in excess of $1 million. These proposed regulations refer to this amount as ''excess remuneration.'' Consistent with section 4960(a)(1), the $1 million threshold is not adjusted for inflation. An amount subject to tax under section 4960(a)(2) as an excess parachute payment is not subject to tax under section 4960(a)(1) as excess remuneration.

As provided in section 4960(c)(4)(C), if an individual performs services as an employee for two or more related organizations during the applicable year, one or more of which is an ATEO, each employer is liable for its proportional share of the excise tax. These proposed regulations provide rules for allocating liability for the excise tax among the employers. For this purpose, remuneration that is paid by a separate organization (whether related to the ATEO or not) for services performed as an employee of the ATEO is treated as remuneration paid by the ATEO. For a further discussion of when amounts are treated as paid on behalf of an ATEO, see part VI of this preamble, titled ''Calculation, Reporting, and Payment of the Tax.''

*V. Excess Parachute Payments*

A. In General

Section 4960(a)(2) imposes an excise tax on any excess parachute payment. Section 4960(c)(5)(A) provides that ''excess parachute payment'' means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment. Section 4960(c)(5)(B) provides that ''parachute payment'' means any payment in the nature of compensation to (or for the benefit of) a covered employee if the payment is contingent on the employee's separation from employment with the employer and the aggregate present value of the payments in the nature of compensation to (or for the benefit of) the individual that are contingent on the separation equals or exceeds an amount equal to 3-times the base amount. Under section 4960(c)(5)(C), certain retirement plan payments, certain payments to licensed medical professionals, and payments to an individual who is not a ''highly compensated employee'' (HCE) as defined in section 414(q) are not excess parachute payments.[6]

[6] Under section 414(q), a ''highly compensated employee'' generally is defined as any employee who was a five-percent owner at any time during the year or the preceding year or who had compensation from the employer in the preceding year in excess of an inflation-adjusted amount. Notice 2018–83 (2018–47 I.R.B. 774) and Notice 2019–59 (2019–47 I.R.B. 1091), provide that the inflation-adjusted amounts for 2019 and 2020 are

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The excess parachute payment rules under section 4960 are modeled after section 280G, but section 4960(c)(5)(B) defines ''parachute payment'' differently than section 280G(b)(2). The section 4960 definition refers to payments contingent on an employee's separation from employment, whereas the section 280G definition refers to payments contingent on a change in the ownership or effective control of a corporation (or in the ownership of a substantial portion of the assets of the corporation). While these proposed regulations incorporate many of the concepts found in the rules under § 1.280G–1, with modifications to reflect the statutory differences between sections 280G and 4960, they do not incorporate other rules under § 1.280G–1 because those rules address issues that do not arise under section 4960. In addition, many provisions in these proposed regulations do not have parallel rules under § 1.280G–1 because they address issues that arise under section 4960, but not under section 280G.

The following sections provide an overview of the guidance in these proposed regulations for purposes of calculating the excise tax imposed under section 4960(a)(2), noting certain similarities and differences between these proposed regulations and the rules under § 1.280G–1.

B. Definitions Related to Excess Parachute Payments

These proposed regulations define ''excess parachute payment'' and the term ''parachute payment'' for purposes of section 4960. Any payment in the nature of compensation made by an ATEO (or its predecessor or related organization) to a covered employee that is contingent on the employee's separation from employment is taken into account for purposes of the parachute payment calculation, assuming no exclusion applies. Those combined payments constitute a parachute payment if the aggregate present value of all such payments made to an individual equals or exceeds 3-times the individual's base amount. A parachute payment is an excess parachute payment to the extent it exceeds one-times the individual's base amount allocated to the payment.

These proposed regulations define a ''payment in the nature of compensation'' based on § 1.280G–1, Q/A–11 and Q/A–14. In general, any payment arising out of an employment relationship is a payment in the nature of compensation. A payment in the nature of compensation is reduced, however, by any consideration paid by the covered employee in exchange for the payment.

C. Payments Contingent on a Separation From Employment

1. In General

Although section 4960 does not define what it means for a payment to be contingent on a separation from employment, these proposed regulations generally treat a payment as contingent on an employee's separation from employment only if there is an involuntary separation from employment. If the payment is subject to a substantial risk of forfeiture (defined in a manner consistent with section 457(f)) at the time of an involuntary separation from employment, and the separation causes the risk of forfeiture to lapse, the payment is contingent on separation from employment.

2. Requirement of Involuntary Separation From Employment

Separation from employment (whether voluntary or involuntary) is often used in compensation arrangements as a trigger to pay vested compensation. For example, it is typical for a nonqualified deferred compensation plan to provide that a payment or a series of payments will be made or begin upon a separation from employment, including separation from employment resulting from death or disability. The vested amounts that are to be paid after a separation from employment generally are not treated as contingent on a separation from employment because the amounts will never be subject to forfeiture or otherwise not paid (even if an employee does not voluntarily or involuntarily terminate employment during the employee's lifetime, the payments will be made upon the employee's death). In these cases, the separation from employment functions only as a payment timing event and is neither a contingent event that may not occur nor a precondition to entitlement to the payment.

3. Definition of ''Involuntary Separation from Employment''

If an amount is payable solely upon an involuntary separation from employment, then it is a payment contingent on an event that may not occur and that is a precondition to entitlement to the payment. The definition of an ''involuntary separation from employment'' set forth in these proposed regulations is modeled after the definition of an ''involuntary separation from service'' in § 1.409A–1(n)(1), which also was the model for the definition of an ''involuntary severance from employment'' under proposed § 1.457–11(d)(2). A separation from employment for good reason is treated as an involuntary separation from employment for purposes of section 4960 if certain conditions are met. For this purpose, these proposed regulations generally adopt the standards set forth in § 1.409A–1(n)(2) and proposed § 1.457–11(d)(2)(ii).

In addition, these proposed regulations generally adopt the standards of the regulations under section 409A for purposes of determining whether there has been a separation from employment, except that a bona fide change from employee to independent contractor status is treated as a separation from employment. However, the IRS may assert, based on all the facts and circumstances, that there was not a bona fide change from employee to independent contractor status. Specifically, these proposed regulations adopt the standards of § 1.409A–1(h)(1)(ii), providing that an anticipated reduction in the level of services of more than 80 percent is treated as a separation from employment, an anticipated reduction in the level of services of less than 50 percent is not treated as a separation from employment, and the treatment of an anticipated reduction between these two levels will depend on the facts and circumstances. The measurement of the anticipated reduction in the level of services is based on the average level of bona fide services performed over the immediately preceding three years (or shorter period for an employee employed for less than three full prior years). However, the proposed regulations do not adopt the rule of § 1.409A–1(h)(1)(ii), under which an employer may modify the level of the anticipated reduction in future services that will be considered to result in a separation from employment. Finally, because the section 409A regulations do not provide a standard for determining when an involuntary change of status from employee to independent contractor results in a separation from employment, the Treasury Department and the IRS request comments on whether additional guidance is needed on this issue.

$125,000 and $130,000, respectively. See section 414(q) and the regulations thereunder for additional details, including the availability of an election to treat no more than the top 20 percent of an employer's employees as highly compensated employees by reason of their compensation.

4. When a Payment Is Contingent on Separation From Employment

In defining when a payment is contingent on separation from employment, these proposed regulations do not focus solely on whether the payment would not have been made but for a separation from employment, but instead also take into consideration whether the separation from employment accelerates the lapse of the substantial risk of forfeiture with respect to the right to payment or accelerates the right to payment. Generally, if the lapse of a substantial risk of forfeiture is accelerated or payment is accelerated as a result of an involuntary separation from employment (such as a payment that otherwise would have vested and been paid had the employee remained employed for a subsequent period of time), then the value of the accelerated payment plus the value of the lapse of the substantial risk of forfeiture is treated as contingent on a separation from employment (since the employer would not have provided the increased value in the absence of an involuntary separation from employment). However, if the lapse of the substantial risk of forfeiture is dependent on an event other than the performance of services, such as the attainment of a performance goal, and if that event does not occur prior to the employee's separation from employment, but the payment vests due to the employee's involuntary separation from employment, then the full amount of the payment is treated as contingent on the separation from employment.

A payment the right to which is not subject to a substantial risk of forfeiture within the meaning of section 457(f)(3)(B) at the time of an involuntary separation from employment generally is not contingent on a separation from employment (since the right to the payment is not triggered by the separation from employment). However, the increased value of an accelerated payment of a previously vested amount resulting from an involuntary separation from employment is treated as a payment contingent on a separation from employment. These proposed regulations adopt the rules of § 1.280G–1, Q/A–24(c) for purposes of determining the value of accelerated vesting.

If a covered employee involuntarily separates from employment before the end of a contract term and is paid damages for breach of contract pursuant to an employment agreement, those damages are treated as a payment that is contingent on a separation from employment. For purposes of these proposed regulations, ''employment agreement'' means an agreement between an employee and employer that describes, among other things, the amount of compensation or remuneration payable to the employee for services performed during the term of the agreement.

A payment under an agreement requiring a covered employee to refrain from performing services (for example, a covenant not to compete) is a payment that is contingent on a separation from employment if the payment would not have been made in the absence of an involuntary separation from employment. For example, if a covenant not to compete including one or more payments contingent on compliance in whole or in part with the covenant not to compete is negotiated as part of a severance arrangement arising from an involuntary separation from employment, generally the payment(s) will be treated as contingent on a separation from employment regardless of whether the payment(s) may be considered reasonable compensation for services provided. Similarly, if a covenant not to compete negotiated as part of an employment agreement provides for a benefit upon an involuntary separation, then the benefit is contingent on a separation from employment regardless of whether the payment may be considered reasonable compensation for services provided. This treatment is different from the treatment of payments made under a covenant not to compete in §§ 1.280G–1, Q/A–9, Q/A–40(b), and Q/A–42(b), under which payments made under a covenant not to compete may be treated as reasonable compensation for services (and thus excluded from the calculation of parachute payments) even if the payments would not have been made in the absence of a change in control. The Treasury Department and the IRS have concluded that the different treatment is warranted because in these cases a covenant not to compete is integrally related to the involuntary separation from employment, whereas a covenant not to compete generally is not integrally related to a change in ownership or control.

Actual or constructive payment of an amount that was previously includible in gross income is not a payment contingent on a separation from employment. For example, a payment of deferred compensation after an involuntary separation from employment that vested based on years of service completed before the involuntary separation from employment generally is not a payment that is contingent on a separation from employment because the separation from employment may affect the time of, but not the right to, the payment (although the value of an acceleration of the payment may be contingent on a separation from employment). Similarly, medical benefits that vested based on years of service completed before an involuntary separation from employment but that are provided after the involuntary separation from employment generally are not treated as payments that are contingent on a separation from employment. In contrast, a payment under a window program described in § 1.409A–1(b)(9)(vi) is contingent on a separation from employment.

Unlike Q/A–25 and Q/A–26 of § 1.280G–1, these proposed regulations do not provide a presumption that a payment made pursuant to an agreement entered into or modified within twelve months of a separation from employment is a payment that is contingent on a separation from employment. However, as discussed further below, if the facts and circumstances demonstrate that either the vesting or the payment of an amount would not have occurred but for the involuntary nature of the separation from employment, the amount will be treated as a payment contingent on a separation from employment.

In addition, these proposed regulations do not provide a rule similar to the one found in § 1.280G–1, Q/A–9 (exempting reasonable compensation for services rendered on or after a change in ownership or control from the definition of ''parachute payment''), that would exclude reasonable compensation for services provided after a separation from employment. In most cases, the issue of whether payments made after a separation from employment are reasonable compensation for services will not arise because the employee will not provide services after the separation from employment. However, if the employee continues to provide services (including as a bona fide independent contractor) after an involuntary separation from employment, payments for those services are not contingent on the involuntary separation from employment to the extent those payments are reasonable and are not made due to the involuntary nature of the separation from employment. Nonetheless, as discussed previously in this section of this preamble, these proposed regulations provide that an agreement under which the employee must refrain from performing services (for example, a covenant not to compete) is not treated as an agreement for the performance of services. See the

discussion in section V.B.4 of this preamble.

Notwithstanding the foregoing, if the facts and circumstances demonstrate that either vesting or payment of an amount (whether before or after an involuntary separation from employment) would not have occurred but for the involuntary nature of the separation from employment, the amount will be treated as contingent on a separation from employment. For example, an employer's exercise of discretion to accelerate vesting of an amount shortly before an involuntary separation from employment may indicate that the acceleration of vesting was due to the involuntary nature of the separation from employment and was therefore contingent on the employee's separation from employment. Similarly, payment of an amount in excess of an amount otherwise payable (for example, increased salary) shortly before or after an involuntary separation from employment may indicate that the amount was paid because the separation was involuntary and was therefore contingent on the employee's separation from employment.

The Treasury Department and the IRS request comments on whether there are types of payments made in connection with separation from employment other than those described in the preceding paragraphs and the extent to which the final regulations under section 4960 should be modified to ensure appropriate classification of those payments as contingent or not contingent on separation from employment.

D. Three-Times-Base-Amount Test

Section 4960(c)(5) provides rules for determining the tax on any excess parachute payment imposed under section 4960(a)(2). Section 4960(c)(5)(B) provides that a payment is a parachute payment only if the aggregate present value of the payments in the nature of compensation to (or for the benefit of) an individual that are contingent on a separation from employment equals or exceeds an amount equal to 3-times the base amount. Section 4960(c)(5)(D) provides that rules similar to the rules of section 280G(b)(3) apply for purposes of determining the base amount, and section 4960(c)(5)(E) provides that rules similar to the rules of section 280G(d)(3) and (4) apply for purposes of present value determinations. Section 280G(b)(3) provides that ''base amount'' means an individual's annualized includible compensation for the base period. Section 280G(d)(2) defines ''base period'' as the period consisting of the five most recent taxable years of the service provider ending before the date on which the change in ownership or control occurs or the portion of such period during which the individual performed personal services for the corporation. Section 280G(d)(3) provides that any transfer of property is treated as a payment and is taken into account at its fair market value. Section 280G(d)(4) provides that present value is determined using a discount rate equal to 120 percent of the applicable Federal rate determined under section 1274(d), compounded semiannually.

These proposed regulations provide that the ''base amount'' is the average annual compensation as an employee of the ATEO (including services performed as an employee of a predecessor or related organization) for the taxable years in the ''base period'' and that the base period is the five most recent taxable years during which the individual was an employee of the ATEO (or predecessor or related organization) or the portion of the five-year period during which the employee was an employee of the ATEO (or predecessor or related organization).

These proposed regulations provide rules for determining whether a payment is an excess parachute payment, including rules for applying the 3-times-base-amount test. Under the proposed regulations, payments in the nature of compensation that are contingent on a separation from employment are parachute payments if the aggregate present value of the payments equals or exceeds 3-times the employee's base amount. In addition, reasonable actuarial assumptions must be used to determine the aggregate present value of payments to be made in years subsequent to the year of separation from employment, and a special rule for the valuation of an obligation to provide health care benefits is proposed. These proposed regulations also provide that the discount rate to be used in determining aggregate present value is 120 percent of the applicable Federal rate under section 1274(d), compounded semi-annually. These proposed regulations further provide rules for determining the present value of a payment to be made in the future that is based on uncertain future events.

The rules proposed for determining the base amount, base period, and present value, including determining the present value of payments that are contingent on uncertain future events, are based on the rules under § 1.280G–1, Q/A–30 through Q/A–36 (substituting an involuntary separation from employment for a change in control). These proposed regulations describe when a payment in the nature of compensation is considered made for purposes of section 4960(a)(2), based on the rules found in § 1.280G–1, Q/A–11 through Q/A–14. Similar to § 1.280G–1, Q/A–11, a payment in the nature of compensation generally is considered made in the same taxable year as the year in which the amount is includible in the employee's gross income or, in the case of fringe benefits and other benefits excludible from income, in the year of receipt. In the case of taxable non-cash fringe benefits, these proposed regulations generally incorporate the income recognition timing rules found in Announcement 85–113 (1985–31 I.R.B. 31). Under these rules, for taxable non-cash fringe benefits provided in a calendar year, payment is considered made on any date or dates the employer chooses during the year (but not later than December 31) or, if provided during the last two months of the calendar year, during the subsequent year (subject to limitations).

These proposed regulations provide that the transfer of section 83 property generally is considered a payment made in the taxable year in which the property is transferred or would be includible in the gross income of the covered employee under section 83, disregarding any election made by the employee under section 83(b) or (i). This rule is consistent with the rules provided under § 1.280G–1, Q/A–12(a). In addition, similar to the rules provided under § 1.280G–1, Q/A–13(a), these proposed regulations generally provide that stock options and stock appreciation rights are treated as property transferred on the date of vesting (regardless of whether the option has a ''readily ascertainable value'' as defined in § 1.83–7(b)). For purposes of determining the timing and amount of any payment related to an option or a stock appreciation right, the principles of § 1.280G–1, Q/A–13 and Rev. Proc. 2003–68 (2003–2 C.B. 398) apply.

E. Computation of Excess Parachute Payments

Consistent with section 4960(c)(5)(A), these proposed regulations provide that an ''excess parachute payment'' is an amount equal to the excess of any parachute payment over the portion of the base amount allocated to the payment. The portion of the base amount allocated to any parachute payment is the amount that bears the same ratio to the base amount as the present value of the parachute payment bears to the aggregate present value of all parachute payments to be made to the covered employee. The rules on

allocation of the base amount provided in these proposed regulations are based on § 1.280G–1, Q/A–38.

*VI. Calculation, Reporting, and Payment of the Tax*

Some ATEOs (and any related non-ATEO organizations) will not be affected by section 4960 because they do not pay any employee sufficient remuneration to trigger the tax. There can be no excess remuneration under section 4960(a)(1) if an ATEO (together with any related organization) does not pay more than $1 million of remuneration to any employee for a taxable year, and there can be no excess parachute payment under section 4960(a)(2) if the employer does not have any HCEs under section 414(q)[7] for the taxable year. In these cases, no excise tax under section 4960 is owed.

These proposed regulations provide rules regarding the entity that is liable for the excise tax under section 4960 and how that excise tax is calculated. These proposed regulations provide that the employer, as determined under section 3401(d), without regard to paragraph (d)(1) or (d)(2), is liable for the excise tax imposed under section 4960. Pursuant to section 4960(d), a payment by the employer may be treated as remuneration or a parachute payment if, based on the facts and circumstances, the payment is structured such that it has the effect of avoiding the tax applicable under section 4960. For example, the excise tax under section 4960 would apply if it would otherwise apply with respect to an individual who is an employee of the ATEO or related organization but who is incorrectly classified as an independent contractor. Similarly, the excise tax under section 4960 would apply to an amount paid to a limited liability company or other entity owned all or in part by an employee (or owned by another entity unrelated to the ATEO or related organization) for services performed by an employee of the ATEO or related organization if the arrangement would otherwise have the effect of avoiding the tax applicable under section 4960. For a further discussion of the definition of ''employer'' under these proposed regulations, see section II.D. of this preamble, titled ''Employer.''

A. Calculation of Tax on Excess Remuneration

An individual may perform services as an employee of an ATEO and as an employee of one or more related organizations during the same applicable year, in which case remuneration paid for the taxable year is aggregated for purposes of determining whether excess remuneration has been paid. To address these cases, these proposed regulations provide rules for allocating liability for the excise tax among the related employers. As provided in section 4960(c)(4)(C), in any case in which an ATEO includes remuneration from one or more related organizations as separate employers of the individual in determining the excise tax imposed by section 4960(a), each employer is liable for its proportional share of the excise tax. In contrast, a payment for the services of an individual who performs services only as an employee of an ATEO, that is made by one or more other organizations (whether those organizations are related to the ATEO or not), is treated as remuneration paid by the ATEO and thus is aggregated with any remuneration paid directly by the ATEO (and the related liability is not allocated to the other organizations). If a covered employee is employed by one employer when the legally binding right to the remuneration is granted and employed by a different employer at vesting, then the covered employee's employer at vesting is treated as paying the remuneration, provided the employment relationship is bona fide and not a means to avoid tax under section 4960. The Treasury Department and the IRS request comments on whether there is a more appropriate approach to allocating liability for the excise tax where services performed for more than one employer during a vesting period are credited towards a vesting requirement based on the performance of services.

Consistent with the discussion of short applicable years in part II.B. of this preamble, titled ''Applicable year,'' a related organization may become related (or may cease to be related) during the applicable year, in which case only remuneration the related organization pays (or is treated as paying due to vesting) to the ATEO's covered employee during the portion of the applicable year that it is a related organization is treated as paid by the ATEO for the taxable year, as provided in section 4960(c)(4)(A).

If an employee is a covered employee of more than one ATEO, these proposed regulations provide that each ATEO calculates its liability under section 4960(a)(1), taking into account remuneration paid to the employee by the organizations to which it is related. These proposed regulations also provide that, rather than owing tax as both an ATEO and a related organization for the same remuneration paid to a covered employee, each employer is liable only for the greater of the excise tax it would owe as an ATEO or the excise tax it would owe as a related organization with respect to that covered employee. These proposed regulations also provide rules for determining liability when a related organization has a termination of ATEO status.

In order to calculate its liability for the tax on excess remuneration, an ATEO may take the following steps:

*Step 1:* Calculate total remuneration paid (other than any excess parachute payment) to each covered employee, including remuneration from all related organizations. The total tax liability for the ATEO and related organizations with respect to each covered employee is 21 percent (for 2020) of the total remuneration paid to the covered employee that exceeds $1 million;

*Step 2:* Calculate the share of the liability for each employer of the covered employee as the portion of the total tax liability that bears the same ratio to the total tax liability as the ratio of the amount of remuneration paid by the employer to the total remuneration calculated in step 1;

*Step 3:* Inform each related organization of its share of the liability calculated in step 2;

*Step 4:* Obtain information on the ATEO's share of the liability as a related organization for any covered employee of another ATEO. If the ATEO is a related organization with respect to more than one other ATEO, treat the ATEO's highest share of the liability as a related organization as its liability as a related organization for the covered employee; and

*Step 5:* Compare the ATEO's liability as an ATEO in step 2 to its share of the liability as a related organization under step 4 for each of the ATEO's covered employees. The ATEO's share of the liability is, and the ATEO reports, the greater of the share calculated under step 2 or step 4.

B. Calculation of Tax on an Excess Parachute Payment

With respect to the calculation of, and liability for, the tax on excess parachute payments, these proposed regulations differ in one respect from the guidance provided in Q/A–1 of Notice 2019–09. Notice 2019–09 provided that an ATEO or related organization may be liable for the tax on an excess parachute payment based on the aggregate parachute payments made by the ATEO and its related organizations, including parachute payments based on separation from employment from a related organization. These proposed

[7] See footnote 8.

regulations provide that only an excess parachute payment paid by an ATEO is subject to the excise tax on excess parachute payments. However, consistent with the provision in section 4960(c)(5)(D) that rules similar to section 280G(b)(3) apply for purposes of determining the base amount under section 4960, payments from related organizations that are not ATEOs are considered for purposes of determining the base amount and total payments in the nature of compensation that are contingent on the covered employee's separation from employment with the employer. See § 1.280G–1, Q/A–34. Generally, this means that a covered employee's base amount calculation includes remuneration from all ATEOs and related organizations, and that a covered employee's parachute payment calculation includes all payments (made from all ATEOs and related organizations) that are contingent on the employee's involuntary separation from employment. However, only ATEOs are subject to the excise tax on excess parachute payments they make to a covered employee. A non-ATEO that pays an amount that would otherwise be an excess parachute payment is not subject to the excise tax. These proposed regulations further provide that, based on the facts and circumstances, the Commissioner may reallocate excess parachute payments to an ATEO if it is determined that excess parachute payments were made by a non-ATEO for the purpose of avoiding the tax under section 4960.

In order to calculate its liability for the tax on excess parachute payments, an ATEO may take the following steps:

*Step 1:* Determine whether a covered employee is entitled to receive payments in the nature of compensation that are contingent on an involuntary separation from employment (contingent payments) and are not excluded from the definition of ''excess parachute payment'';

*Step 2:* Calculate the total aggregate present value of the contingent payments, taking into account the rules that apply when an involuntary separation from employment accelerates the timing of a payment or the vesting of a right to a payment;

*Step 3:* Calculate the covered employee's base amount with respect to the base period;

*Step 4:* Determine whether the contingent payments are parachute payments. Contingent payments are parachute payments if their total aggregate present value equals or exceeds an amount equal to 3-times the covered employee's base amount;

*Step 5:* Calculate the amount of excess parachute payments. A parachute payment is an excess parachute payment to the extent the payment exceeds the base amount allocated to the payment; and

*Step 6:* Calculate the amount of excise tax imposed under section 4960(a)(2). The excise tax is the amount equal to the product of the rate of tax under section 11 (21 percent for 2020) and the sum of any excess parachute payments paid by an ATEO or related organization during a taxable year to the covered employee.

C. Reporting and Payment of the Tax

On April 9, 2019, the Treasury Department and the IRS issued final regulations under sections 6011 and 6071 (§§ 53.6011–1 and 53.6071–1, T.D. 9855, 84 FR 14008) to address reporting and the due date for paying the section 4960 tax. Those final regulations provide that the excise tax under section 4960 is reported on Form 4720, ''Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code,'' which is the form generally used for reporting and paying chapter 42 taxes. Those final regulations provide that the reporting and payment of any applicable taxes are due when payments of chapter 42 taxes are ordinarily due (the 15th day of the 5th month after the end of the taxpayer's taxable year—May 15 for a calendar year employer), subject to an extension of time for filing returns and making payments [8] that generally applies.

These proposed regulations provide that each employer liable for section 4960 tax, whether an ATEO or a related organization described in section 4960(c)(4)(B), is responsible for separately reporting and paying its share of the tax. These proposed regulations also provide that an employer may elect to prepay the excise tax imposed under section 4960(a)(2) for excess parachute payments in the year of separation from employment or any taxable year prior to the year in which the parachute payment is actually paid. This prepayment rule for the tax applicable to excess parachute payments is similar to the rule in § 1.280G–1, Q/A–11(c), under which a disqualified employee may elect to prepay the excise tax under section 4999 based on the present value of the excise tax that would be owed by the employee when the parachute payments are actually made.

[8] The tentative tax, an estimate, must be paid by the due date of Form 4720 without extensions. and may be paid with Form 8868, ''Application for Automatic Extension of Time To File an Exempt Organization Return.''

Some commenters requested clarification as to whether the section 4960 excise tax is subject to quarterly payments of estimated tax under section 6655. Because section 6655 has not been amended to include section 4960, no quarterly payments of estimated section 4960 excise tax are required under section 6655.

*VII. Proposed Applicability Date*

These regulations are proposed to apply to taxable years beginning on or after the date the final regulations are published in the **Federal Register**. The Treasury Department and the IRS understand that the date during a calendar year on which final regulations are issued may affect the time an ATEO and its related organization(s) will have to familiarize themselves with the regulations and to respond with adjustments to compensation structures or other adjustments. The Treasury Department and the IRS will take this into account when issuing the final regulations, but also request comments on the burdens anticipated and the timeframe expected to be necessary to implement the final regulations (taking into account that the statutory provisions are already effective).

The guidance provided in these proposed regulations generally is consistent with the guidance provided in Notice 2019–09. However, in certain instances these proposed regulations modify the guidance provided in Notice 2019–09. Until the applicability date of the final regulations, taxpayers may rely on the guidance provided in Notice 2019–09 or, alternatively, on the guidance provided in these proposed regulations, including for periods prior to June 11, 2020.

Taxpayers may also base their positions upon a reasonable, good faith interpretation of the statute that includes consideration of any relevant legislative history. Whether a taxpayer's position that is inconsistent with Notice 2019–09 or these proposed regulations constitutes a reasonable, good faith interpretation of the statute generally will be determined based upon all of the relevant facts and circumstances, including whether the taxpayer has applied the position consistently and the extent to which the taxpayer has resolved interpretive issues based on consistent principles and in a consistent manner. Notwithstanding the previous sentence, the preamble to Notice 2019–09 describes certain positions that the Treasury Department and the IRS have concluded are not consistent with a reasonable, good faith interpretation of the statutory language, and these proposed regulations reflect this view.

Specifically, the following positions will continue to be treated as inconsistent with a reasonable, good faith interpretation of the statutory language:

(1) *Remuneration paid by a separate employer that is a related for-profit or governmental entity (other than an ATEO).* The position that remuneration paid by a separate employer that is a related for-profit or governmental entity (other than an ATEO) is taken into account in determining whether a covered employee has remuneration in excess of $1 million, but that the related entity is not liable for its share of the excise tax under section 4960, is not consistent with a reasonable, good faith interpretation of the statutory language. There is no statutory support for such an exception for for-profit and governmental entities. Section 4960(c)(4)(B), which defines ''related organizations,'' applies to any ''person or governmental entity'' that meets any of the relationship tests in section 4960(c)(4)(B)(i) through (v). Unlike the definition of an ''ATEO'' under section 4960(c)(1)(C), which applies only to a governmental entity that excludes income from taxation under section 115(1), section 4960(c)(4)(B) applies to any ''governmental entity'' that is related to an ATEO. Similarly, a for-profit entity is a ''person'' under generally applicable tax principles. In addition, excepting for-profit entities from liability as related organizations would be inconsistent with section 4960(c)(6), which coordinates the tax on excess parachute payments with the section 162(m) deduction limitation (which only applies to for-profit entities). Finally, section 4960(c)(4)(C), which describes the liability for the excise tax, refers to any case in which remuneration from more than one employer is taken into account, stating that ''each such employer'' shall be liable, without qualification as to the employer's status as an ATEO.

(2) *Continued treatment of a covered employee as a covered employee.* The position that a covered employee ceases to be a covered employee after a certain period of time is not consistent with a reasonable, good faith interpretation of the statute. Although commenters requested that the Treasury Department and the IRS provide a rule of administrative convenience under which a covered employee is no longer considered a covered employee of an ATEO after a certain period of time during which the individual was not an active employee of the ATEO, neither Notice 2019–09 nor these proposed regulations adopt that suggestion because it is inconsistent with the statute.

(3) *Remuneration for medical services for purposes of determining the five highest-compensated employees.* The position that remuneration for medical services is taken into account for purposes of identifying the five highest-compensated employees is not consistent with a reasonable, good faith interpretation of the statute. As the Conference Report to TCJA states, ''[f]or purposes of determining a covered employee, remuneration paid to a licensed medical professional which is directly related to the performance of medical or veterinary services by such professional is not taken into account, whereas remuneration paid to such a professional in any other capacity is taken into account.'' H. Rept. 115–466, at 494 (2017).

(4) *Covered employees of a group of related organizations.* The position that a group of related ATEOs may have only five highest-compensated employees among all of the related ATEOs is not consistent with a reasonable, good faith interpretation of the statute. Section 4960 does not provide for such treatment. Further, to the extent section 4960 is analogous to the compensation deduction limitation under section 162(m), § 1.162–27(c)(1)(ii) provides that each related subsidiary within an affiliated group of corporations that is itself a publicly held corporation is separately subject to the deduction limitation, just as each ATEO within a group of related organizations is separately subject to section 4960.

## Special Analyses

### *I. Regulatory Planning and Review*

Executive Orders 13771, 13563, and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Executive Order 13771 designation for any final rule resulting from the proposed regulation will be informed by comments received. The preliminary Executive Order 13771 designation for this proposed rule is ''regulatory.''

The proposed regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs (OIRA) has designated the proposed rulemaking as significant under section 1(c) of the Memorandum of Agreement. Accordingly, OMB has reviewed the proposed regulations.

#### A. Background

##### 1. The Excise Tax Under Section 4960

Section 4960 was added to the Code by TCJA. Section 4960(a) subjects excess remuneration above $1 million and excess parachute payments that an ATEO pays to a covered employee to an excise tax equal to the rate of tax imposed on corporations under section 11 (21 percent for 2020). Before TCJA, compensation paid by tax-exempt organizations was not subject to an excise tax, although section 4958 applies an excise tax to penalize excess benefit transactions in which an ''applicable tax-exempt organization'' (as defined in section 4958) provides a benefit to a disqualified person that exceeds the reasonable fair market value of the services received.

Section 4960 defines an ''ATEO'' as any organization which is exempt from taxation under section 501(a), is a farmers' cooperative organization described in section 521(b)(1), has income excluded from taxation under section 115(1), or is a political organization described in section 527(e)(1). Covered employees of an ATEO include the five highest-compensated employees of the organization for the taxable year and any employee or former employee who was a covered employee of the organization (or predecessor) for any preceding taxable year beginning after December 31, 2016.

''Remuneration'' means ''wages'' as defined in section 3401(a) (excluding designated Roth contributions) and includes amounts required to be included in gross income under section 457(f). Section 4960 excludes from remuneration any amount paid to a licensed medical professional for medical or veterinary services provided. Remuneration also includes payments with respect to employment of a covered employee by any person or government entity related to the ATEO. A person or governmental entity is treated as related to the ATEO if that person or governmental entity controls, or is controlled by, the ATEO, is controlled by one or more persons which control the ATEO, is a ''supported organization'' (as defined in

section 509(f)(3)) during the taxable year with respect to the ATEO, is a supporting organization described in section 509(a)(3) during the taxable year with respect to the ATEO, or in the case of an organization which is a voluntary employees' beneficiary association (VEBA) under section 501(c)(9), established, maintains, or makes contribution to such VEBA.

2. Notice 2019–09 and the Proposed Regulations

Notice 2019–09 provides taxpayers with initial guidance on the application of section 4960, including that taxpayers may base their positions on a reasonable, good faith interpretation of the statute until further guidance is issued. These proposed regulations are largely based on Notice 2019–09 with changes in part addressing comments received.

The Treasury Department and the IRS received 14 comments in response to Notice 2019–09. The comments primarily discussed the treatment of employees of a related person who also provide services to the ATEO, suggesting various exceptions for such situations. Comments also addressed the possibility of a grandfather rule for compensation under prior arrangements, treatment of deferred compensation as remuneration, the definition of ''control,'' and which organizations are ATEOs.

B. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

C. Affected Entities

The proposed regulations affect an estimated 261,000 ATEOs and 77,000 non-ATEO related organizations of ATEOs that in historical filings report substantial executive compensation.[9] Of the roughly 261,000 such ATEOs based on filings for tax year 2017, 239,000 are section 501(a) exempt organizations (including 23,000 private foundations), 19,000 are section 115 state and local instrumentalities, 2,000 are section 527 political organizations, 600 are exempt farmers' cooperative organizations described in section 521(b)(1), and 200 are federal instrumentalities.

[9] The methods and data used to estimate the number of affected entities are discussed in detail in the Paperwork Reduction Act special analysis.

D. Economic Analysis

This section describes the key economic effects of the provisions of these proposed regulations.

1. Clarifications

Most provisions of the proposed regulations clarify aspects of the excise tax imposed by section 4960, minimizing the burdens entities bear to comply with section 4960, and have little other economic impact. Clarifications reduce uncertainty, lowering the effort required to infer which organizations, employees, and payments are subject to the excise tax and the potential for conflict if entities and tax administrators interpret provisions differently. Examples of provisions of the proposed regulations that are primarily clarifications include the definition of ''control,'' treatment of deferred compensation and vesting, and which organizations are ATEOs.

2. ''Volunteer'' Exceptions

Several commenters expressed concern that highly-paid employees of a non-ATEO performing services for a related ATEO without receiving compensation from the ATEO may be subject to the excise tax. To avoid the excise tax, individuals might cease performing such services, or ATEOs might dissolve their relationships with related non-ATEOs, reducing donations from related non-ATEOs.

The proposed regulations include exceptions to the definitions of ''employee'' and ''covered employees'' (specifically to the rules for determining the five highest compensated employees for purposes of identifying covered employees) to address such situations. With respect to the first exception, the regulations define ''employee'' consistent with section 3401(c), in particular adopting the rule that a director is not an employee in the capacity as a director and an officer performing minor or no services and not receiving any remuneration for those services is not an employee.

The general rule provides that employees of a related non-ATEO are not considered for purposes of determining the five highest-compensated employees if they are never employees of the ATEO. In addition, individuals who receive no remuneration (or grant of a legally binding right to remuneration) from the ATEO or a related organization cannot be among the ATEO's five highest-compensated employees.

Under the exceptions, an ATEO's five highest-compensated employees also exclude an employee of the ATEO who receives no remuneration from the ATEO and performs only limited services for the ATEO, which means that no more than 10 percent of total annual hours worked for the ATEO and related organizations are for services performed for the ATEO. An employee who performs fewer than 100 hours of services as an employee of an ATEO and its related ATEOs is treated as having worked less than 10 percent of total hours for the ATEO and related ATEOs. An employee who is not compensated by an ATEO, related ATEO, or any taxable related organization controlled by the ATEO and who primarily (more than 50 percent of total hours worked) provides services to a related non-ATEO is also disregarded. Likewise, an employee is disregarded if an ATEO paid less than 10 percent of the employee's total remuneration for services performed for the ATEO and all related organizations. However, in the case of related ATEOs, if neither the ATEO nor any related ATEO paid more than 10 percent of the employee's total remuneration, then the ATEO that paid the highest percent of remuneration does not meet this exception.

Consider, for example, a corporate employee making $2 million per year who spends 5 percent of her time (roughly one day each month) working for the corporation's foundation, a related ATEO, without receiving compensation from the ATEO and who would be a covered employee of the ATEO absent the exceptions. The value of the employee's services provided to the ATEO is roughly five percent of her salary, or $100,000. Without the exceptions, her compensation in excess of $1 million from the corporation, which is a related party of the foundation, is subject to a 21 percent excise tax, or $210,000 in excise tax liability. The exceptions remove that liability and the incentive it provides to stop providing such services or to dissolve the relationship between the ATEO and the related organization.

The exceptions in the proposed regulations may have a substantial impact on donations relative to a no-action baseline, although the magnitude of the potential impact depends on how often the exceptions apply and on how responsive organizations and employees are to the excise tax, both of which are uncertain.

The exceptions apply only in particular circumstances: The employee must be employed by a related organization (typically an organization that controls or is controlled by the ATEO), the employee must be highly compensated, and the employee's work for the ATEO must be sufficiently

minimal. Historically, many ATEOs report employees with compensation from related organizations. An estimated 8,500 ATEOs filing Form 990 in tax year 2017 reported both compensation of $500,000 or more for any person and any compensation from related organizations. These ATEOs are estimated to have an average of 18 non-ATEO related organizations based on information reported on Form 990 Schedule R, yielding an estimated 154,000 non-ATEO related organizations, of which half, or 77,000, are estimated to employ a covered employee of the ATEO. The fraction of the 154,000 non-ATEO related organizations with employees to whom the exceptions apply (and who are thus not covered employees of the ATEO) is uncertain, but perhaps half the related organizations, or 77,000, have such an employee.

This entity count omits a substantial number of private foundations which may have employees who receive no compensation from the ATEO but who are highly compensated by related organizations, because while the ATEO count used in these estimates includes approximately 100 private foundations that have historically reported employee compensation of $500,000 or more on Form 990–PF, Form 990–PF (unlike Form 990) does not include information on employee compensation received from related organizations. The exceptions are particularly likely to apply to donations to foundations related to non-ATEO businesses, as companies are highly likely to be related organizations of a company's foundation, many family foundations are controlled by the same family that controls a private business, and executives of the related business often provide services to the foundation without payment from the foundation. Because of these facts, looking at pre-TCJA tax forms may underestimate the number of entities potentially affected by the exceptions. In the U.S. in 2015, there were about 2,000 company foundations responsible for $5.5 billion in giving, and 42,000 family foundations.[10] It is reasonable to assume that about half of these foundations, or 22,000, have a related business with an employee to whom the exceptions apply.

Under reasonable assumptions about the response of donated services to the excise tax, the exceptions restore substantial donations (transfers) of services that the excise tax would otherwise eliminate. Totaling both private foundations and other ATEOs, roughly 99,000 related organizations are estimated to have employees to whom the exceptions apply. If the excise tax would have reduced services that are donated under the exceptions by an average of just over $5,000 per related organization, the total transfer reduction exceeds $500 million.

Absent the exceptions, organizations may also avoid the excise tax by dissolving the relationship between the ATEO and non-ATEO, which may affect donations of money as well as services. Considering only corporate foundations and setting aside other ATEOs, if such dissolutions would lead to a two percent reduction in the $5.5 billion in corporate giving that would otherwise take place through related foundations, the reduction exceeds $100 million. The Treasury Department and the IRS request comments on the impact of the exceptions on the dissolution of relationships between ATEOs and related organizations.

It is plausible that the proposed regulations restore substantial economic activity relative to a no-action baseline, under which the excise tax would discourage highly-compensated employees of related non-ATEOs from providing services to a related ATEO without compensation from the ATEO and discourage relationships between ATEOs and non-ATEOs.

3. Summary

This analysis suggests that the proposed regulations will reduce compliance burden on affected entities by providing clarifications and, through the exceptions, increase services provided to ATEOs without compensation from the ATEO by a small but potentially economically significant amount ($100 million or more), relative to a no-action baseline. The Treasury Department and the IRS request comments on the economic impact of these proposed regulations. In particular, comments that provide data, other evidence, or models that provide insight are requested.

*II. Paperwork Reduction Act*

The collections of information in these proposed regulations are in proposed § 53.4960–1(d), (h), (i)(2) and (j); § 53.4960–2(a), (c) and (d); and § 53.4960–4(a) and (d). This information is required to determine an ATEO's ''covered employees'' as defined in section 4960(c)(2); to calculate remuneration in excess of $1 million as described in section 4960(c)(3); to determine remuneration from related organizations and allocation of liability as described in section 4960(c)(4); and to determine any excess parachute payments to covered employees described in section 4960(c)(5).

The IRS intends that the burden of the collections of information will be reflected in the burden associated with Form 4720, under OMB approval number 1545–0047. The burden associated with Form 4720 is included in the aggregated burden estimates for OMB control number 1545–0047. For purposes of the Paperwork Reduction Act, the Treasury Department and the IRS have not estimated the burden, including that of any new information collections, related to the requirements under the proposed regulations.

The expected burden for ATEOs as described in section 4960(c)(1) and related organizations as described in section 4960(c)(4)(B) is listed below:

*Estimated number of respondents:* 337,888.

*Estimated average annual burden hours per response:* 0.20 hours (based on 66,509 total hours).

*Estimated total annual burden:* $3,569,632 (2020).

*Estimated frequency of collection:* Annual.

The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations, including estimates for how much time it would take to comply with the paperwork burdens described above for each relevant form and ways for the IRS to minimize the paperwork burden. Proposed revisions (if any) to these forms that reflect the information collections contained in the final regulations will be made available for public comment at *https://apps.irs.gov/app/picklist/list/draftTaxForms.html* and will not be finalized until after these forms have been approved by OMB under the PRA. Comments on these forms can be submitted at *https://www.irs.gov/forms-pubs/comment-on-tax-forms-and-publications.*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

*III. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), it is hereby certified that these proposed

[10] *http://data.foundationcenter.org/.*

regulations would not have a significant economic impact on a substantial number of small entities.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA) (13 CFR 121.201), (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. (States and individuals are not included in the definition of ''small entity.'') The Treasury Department and IRS estimate that these proposed regulations will affect 324,000 small entities, 73,000 of which are proprietary firms meeting the size standards of the SBA and 251,000 of which are nonprofit organizations that are not dominant in their fields or small government jurisdictions with a population of less than 50,000.

The Treasury Department and IRS estimated the number of ATEOs, based primarily on Form 990 data for filers with at least one employee (and thus having a burden, at a minimum, of maintaining annual lists of covered employees), as 261,118, and the number of non-ATEO related organizations employing at least one covered employee of an ATEO as 76,770, for a total of 337,888 affected entities. The SBA defines a small business as an independent business having fewer than 500 employees. (See A Guide for Government Agencies, How to Comply with the Regulatory Flexibility Act, Appendix B [11]). Tax data available to Treasury Department and IRS include employee counts for only half the affected entities, as employee counts are included on Form 990, but not on other forms including Form 990–EZ and 990–PF. An examination of tax data from 2016 shows that for filers for whom employee counts were available and who had at least one employee, 96.5 percent had fewer than 500 employees. Similarly, there are no bright lines in the available data to distinguish small nonprofit organizations that are not dominant in their field. An examination of non-tax data shows that a similar proportion, approximately 96 percent, of all incorporated cities, towns, and villages in 2014 had a population of less than 50,000, which may serve as a proxy for small government jurisdictions generally.[12] By applying the 96 percent estimate to all entities affected by section 4960, the Treasury Department and IRS estimate that 324,000 small entities are affected by these regulations.

Section 4960 imposes the excise tax on ATEOs and their related organizations to the extent they pay certain compensation to a covered employee. Because covered employee status is permanent, every ATEO must determine its five highest-compensated employees for the taxable year—even if the ATEO is not subject to the tax for that taxable year—and maintain a list of covered employees. Accordingly, the proposed rules likely will affect a substantial number of small entities, especially nonprofit entities that are not dominant in their fields.

The Treasury Department and the IRS estimate that vast majority of ATEOs, particularly small ATEOs, can determine their five highest-compensated employees for the taxable year under the method provided in the proposed rule very quickly and at negligible cost using information already collected in the normal course of business. The time necessary to determine an ATEO's five highest-compensated employees is positively correlated with the size of the entity (that is, the smaller the entity, the less time such a determination should take). Larger ATEOs may take more time, but it is estimated that this determination will take less than seven hours. The burden for making this determination is estimated to fall on the small number of larger ATEOs. Putting these two groups together, the total estimated cost for all 261,118 ATEOs to make these determinations is $1,255,760 per year, averaging $4.81 per ATEO. Thus, the Treasury Department and the IRS have determined that the proposed rules regarding an ATEO's covered employees are unlikely to have a significant economic impact on affected small entities.

Notwithstanding this certification, the Treasury Department and the IRS invite comments from the public on both the number of entities affected (including whether specific industries are affected) and the economic impact of this proposed rule on small entities.

Pursuant to section 7805(f) of the Code, this proposed rule has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small entities.

*IV. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $164 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

*V. Executive Order 13132: Federalism, Congressional Review Act*

Executive Order 13132 (titled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications that are not required by the statute and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

**Comments and Requests for a Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of these proposed regulations. Any electronic comments submitted and, to the extent practicable, any paper comments submitted will be made available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

**Drafting Information**

The principal authors of these regulations are William McNally of the Office of Associate Chief Counsel

[11] *https://advocacy.sba.gov/2017/08/31/a-guide-for-government-agencies-how-to-comply-with-the-regulatory-flexibility-act/.*

[12] See *https://www.statista.com/statistics/241695/number-of-us-cities-towns-villages-by-population-size/.*

(Employee Benefits, Exempt Organizations and Employment Taxes, Executive Compensation branch) and Patrick Sternal of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes, Exempt Organizations branch). However, other personnel from the Treasury Department and the IRS participated in their development.

**Statement of Availability**

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 53*

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, the Department of the Treasury and the Internal Revenue Service propose to amend 26 CFR parts 1 and 53 as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *.

■ **Par. 2.** Section 1.338–1 is amended by revising paragraph (b)(2)(i) to read as follows:

**§ 1.338–1 General principles; status of old target and new target.**

* * * * *

(b) * * *

(2) * * *

(i) The rules applicable to employee benefit plans (including those plans described in sections 79, 104, 105, 106, 125, 127, 129, 132, 137, and 220), qualified pension, profit-sharing, stock bonus and annuity plans (sections 401(a) and 403(a)), simplified employee pensions (section 408(k)), tax qualified stock option plans (sections 422 and 423), welfare benefit funds (sections 419, 419A, 512(a)(3), and 4976), voluntary employee benefit associations (section 501(c)(9) and the regulations thereunder), and tax on excess tax-exempt organization executive compensation (section 4960) and the regulations in part 53 under section 4960;

* * * * *

## PART 53—FOUNDATION AND SIMILAR EXCISE TAXES

■ **Par. 3.** The authority citation for part 53 is revised to read in part as follows:

**Authority:** 26 U.S.C. 7805; 4960.

* * * * *

■ **Par. 4.** Sections 53.4960–0 through 53.4960–5 are added to read as follows:

Sec.

* * * * *

53.4960–0 Table of contents.
53.4960–1 Scope and definitions.
53.4960–2 Determination of remuneration paid for an applicable year.
53.4960–3 Determination of whether there is a parachute payment.
53.4960–4 Liability for tax on excess remuneration and excess parachute payments.
53.4960–5 Applicability date.

* * * * *

**§ 53.4960–0 Table of contents.**

### § 53.4960–1 Scope and definitions.

(a) *Scope.* This section provides definitions for purposes of section 4960, this section, and §§ 53.4960–2 through 53.4960–5. Section 53.4960–2 provides definitions and rules for determining the amount of remuneration paid for a taxable year. Section 53.4960–3 provides definitions and rules for determining whether a parachute payment is paid. Section 53.4960–4 provides definitions and rules for calculating the amount of excess remuneration paid for a taxable year, excess parachute payments paid in a taxable year, and liability for the excise tax. Section 53.4960–5 provides rules regarding the applicability date for the regulations under section 4960. The rules and definitions provided in this section through § 53.4960–5 apply solely for purposes of section 4960 and this section through § 53.4960–5 unless specified otherwise.

(b) *Applicable tax-exempt organization*—(1) *In general. Applicable tax-exempt organization* or *ATEO* means any organization that is the any of following types of organizations:

(i) *Section 501(a) organization.* The organization is exempt from taxation under section 501(a);

(ii) *Section 521 farmers' cooperative.* The organization is a farmers' cooperative organization described in section 521(b)(1);

(iii) *Section 115(1) organization.* The organization has income excluded from taxation under section 115(1); or

(iv) *Section 527 political organization.* The organization is a political organization described in section 527(e)(1).

(2) *Certain foreign organizations.* A foreign organization (as defined in § 53.4948–1(a)) that, for its taxable year, receives substantially all of its support (other than gross investment income) from the date of its creation from sources outside of the United States is not an ATEO. See section 4948(b).

(c) *Applicable year*—(1) *In general. Applicable year* means the calendar year ending with or within the ATEO's taxable year. See § 53.4960–4 regarding

how an ATEO's applicable year affects the liability of related organizations.

(2) *Examples.* The following examples illustrate the rules of paragraph (c)(1) of this section.

(i) *Example 1 (Calendar year taxpayer)*—(A) *Facts.* ATEO 1 uses the calendar year as its taxable year and became an ATEO before 2021.

(B) *Conclusion.* ATEO 1's applicable year for its 2021 taxable year is the period from January 1, 2021, through December 31, 2021 (that is, the 2021 calendar year).

(ii) *Example 2 (Fiscal year taxpayer)*—(A) *Facts.* ATEO 2 uses a taxable year that starts July 1 and ends June 30 and became an ATEO before 2021.

(B) *Conclusion.* ATEO 2's applicable year for the taxable year beginning July 1, 2021, and ending June 30, 2022, is the 2021 calendar year.

(3) *Short applicable years*—(i) *In general.* An ATEO may have an applicable year that does not span the entire calendar year for the initial taxable year that the organization is an ATEO or for the taxable year in which the taxpayer ceases to be an ATEO. The beginning and end dates of the applicable year in the case of an ATEO's change in status depend on when the change in status occurs.

(ii) *Initial year of ATEO status.* For the taxable year in which an ATEO first becomes an ATEO, *applicable year* means the period beginning on the date the ATEO first becomes an ATEO and ending on the last day of the calendar year ending with or within such taxable year (or, if earlier, the date of termination of ATEO status, as described in paragraph (c)(3)(ii)(A) of this section). If the taxable year in which an ATEO first becomes an ATEO ends before the end of the calendar year in which the ATEO first becomes an ATEO, then there is no applicable year for the ATEO's first taxable year; however, for the ATEO's next taxable year, *applicable year* means the period beginning on the date the ATEO first becomes an ATEO and ending on December 31 of the calendar year (or, if earlier, the date of termination of ATEO status, as described in paragraph (c)(3)(ii)(A) of this section).

(iii) *Year of termination of ATEO status*—(A) *Termination on or before the close of the calendar year ending with or within the taxable year of termination.* If an ATEO has a termination of ATEO status during the taxable year and the termination of ATEO status occurs on or before the close of the calendar year ending with or within such taxable year, then, for the taxable year of termination of ATEO status, *applicable year* means the period starting January 1 of the calendar year of the termination of ATEO status and ending on the date of the termination of ATEO status.

(B) *Termination after the close of the calendar year ending in the taxable year of termination.* If an ATEO has a termination of ATEO status during the taxable year and the termination of ATEO status occurs after the close of the calendar year ending within such taxable year, then, for the taxable year of the termination of ATEO status, *applicable year* means both the calendar year ending within such taxable year and the period beginning January 1 of the calendar year of the termination of ATEO status and ending on the date of the termination of ATEO status. Both such applicable years are treated as separate applicable years. See § 53.4960–4(b)(2)(ii) for rules regarding calculation of the tax in the event there are multiple applicable years associated with a taxable year.

(4) *Examples.* The following examples illustrate the rules of paragraph (c)(3) of this section. For purposes of these examples, assume any entity referred to as ''ATEO'' is an ATEO and any entity referred to as ''CORP'' is not an ATEO.

(i) *Example 1 (Taxable year of formation ending after December 31)*—(A) *Facts.* ATEO 1, ATEO 2, and CORP 1 are related organizations that all use a taxable year that starts July 1 and ends June 30. ATEO 1 is recognized as a section 501(c)(3) organization by the IRS on May 8, 2022, effective as of October 1, 2021. ATEO 2 became an ATEO in 2017.

(B) *Conclusion (ATEO 1).* ATEO 1's applicable year for the taxable year beginning October 1, 2021, and ending June 30, 2022, is the period beginning October 1, 2021, and ending December 31, 2021. For purposes of determining the amount of remuneration paid by ATEO 1 and all related organizations for ATEO 1's taxable year beginning October 1, 2021, and ending June 30, 2022, (including for purposes of determining ATEO 1's covered employees), only remuneration paid between October 1, 2021, and December 31, 2021, is taken into account. Thus, any remuneration paid by ATEO 1, ATEO 2, or CORP 1 before October 1, 2021, is disregarded for purposes of ATEO 1's applicable year associated with its initial taxable year.

(C) *Conclusion (ATEO 2).* ATEO 2's applicable year for its taxable year beginning July 1, 2021, and ending June 30, 2022, is the 2021 calendar year. Thus, any remuneration paid by ATEO 1, ATEO 2, or CORP 1 during the 2021 calendar year is taken into account for purposes of determining ATEO 2's covered employees and remuneration paid for ATEO 2's taxable year ending June 30, 2022.

(ii) *Example 2 (Taxable year of formation ending before December 31)*—(A) *Facts.* Assume the same facts as in paragraph (c)(4)(i)(A) of this section (Example 1), except that ATEO 1 is recognized as a section 501(c)(3) organization effective as of March 15, 2022.

(B) *Conclusion.* ATEO 1 has no applicable year for the taxable year starting March 15, 2022, and ending June 30, 2022, because no calendar year ends (or termination of ATEO status occurs) with or within the taxable year. ATEO 1's applicable year for the taxable year ending June 30, 2023, is the period beginning March 15, 2022, and ending December 31, 2022. For purposes of determining the amount of remuneration paid by ATEO 1 and all related organizations for ATEO 1's taxable year ending June 30, 2023 (including for purposes of determining ATEO 1's covered employees), only remuneration paid between March 15, 2022, and December 31, 2022, is taken into account. The conclusion for ATEO 2 is the same as in paragraph (c)(4)(i)(B) of this section (Example 1).

(iii) *Example 3 (Termination before the close of the calendar year ending in the taxable year of termination)*—(A) *Facts.* Assume the same facts as in paragraph (c)(4)(i)(A) of this section (Example 1). In addition, ATEO 1 has a termination of ATEO status on September 30, 2023.

(B) *Conclusion.* For ATEO 1's taxable year beginning July 1, 2023, and ending September 30, 2023, ATEO 1's applicable year is the period beginning January 1, 2023, and ending September 30, 2023.

(iv) *Example 4 (Termination after the close of the calendar year ending in the taxable year of termination)*—(A) *Facts.* Assume the same facts as in paragraph (c)(4)(i)(A) of this section (Example 1). In addition, ATEO 1 has a termination of ATEO status on March 31, 2024.

(B) *Conclusion.* For ATEO 1's taxable year beginning July 1, 2023, and ending March 31, 2024, ATEO 1 has two applicable years: the 2023 calendar year, and the period beginning on January 1, 2024, and ending on March 31, 2024.

(d) *Covered employee*—(1) *In general.* For each taxable year, *covered employee* means any individual who is one of the five highest-compensated employees of the ATEO for the taxable year, or was a covered employee of the ATEO (or any predecessor) for any preceding taxable year beginning after December 31, 2016.

(2) *Five highest-compensated employees*—(i) *In general.* Except as otherwise provided in this paragraph (d)(2), an individual is one of an ATEO's five highest-compensated employees for the taxable year if the individual is among the five employees of the ATEO with the highest amount of remuneration paid during the applicable year, as determined under § 53.4960–2. However, remuneration described in § 53.4960–2(f)(1), the deduction for which is disallowed by reason of section 162(m), is taken into account for purposes of determining an ATEO's five highest-compensated employees. The five highest-compensated employees of an ATEO for the taxable year are identified on the basis of the total

remuneration paid during the applicable year to the employee for services performed as an employee of the ATEO or any related organization. An ATEO may have fewer than five highest-compensated employees for a taxable year if it has fewer than five employees other than employees who are disregarded under paragraphs (d)(2)(ii) through (v) of this section. For purposes of this paragraph (d)(2), a grant of a legally binding right (within the meaning of § 1.409A–1(b)) to vested remuneration is considered to be remuneration paid as of the date of grant, as described in § 53.4960–2(c)(1), and a person or governmental entity is considered to grant a legally binding right to nonvested remuneration if the person or governmental entity grants a legally binding right to remuneration that is not vested within the meaning of § 53.4960–2(c)(2). An employee is disregarded for purposes of determining an ATEO's five highest-compensated employees for a taxable year if, during the applicable year, neither the ATEO nor any related organization paid remuneration or granted a legally binding right to nonvested remuneration to the individual for services the individual performed as an employee of the ATEO or any related organization.

(ii) *Limited hours exception*—(A) *In general.* An individual is disregarded for purposes of determining an ATEO's five highest-compensated employees for a taxable year if, for the applicable year, all of the following requirements are met:

(*1*) *Remuneration requirement.* Neither the ATEO nor any related ATEO paid remuneration or granted a legally binding right to nonvested remuneration to the individual for services the individual performed as an employee of the ATEO; and

(*2*) *Hours of service requirement.* The individual performed services as an employee of the ATEO and all related ATEOs for no more than 10 percent of the total hours the individual worked as an employee of the ATEO and all related organizations. For this purpose, an ATEO may instead use a percentage of total days worked by the employee, provided that any day that the employee works at least one hour for the ATEO is treated as a full day worked for the ATEO and not for any other organization.

(B) *Certain payments disregarded.* For purposes of paragraph (d)(2)(ii)(A)(*1*) of this section, a payment made to the individual during the ATEO's applicable year by a related organization that is an employer of the employee and for which the related organization is neither reimbursed by the ATEO nor entitled to any other consideration from the ATEO is not deemed paid by the ATEO under § 53.4960–2(b)(1) and a payment made to the individual during the ATEO's applicable year by a related organization is not treated as paid by the ATEO under § 53.4960–2(b)(2).

(C) *Safe harbor.* For purposes of paragraph (d)(2)(ii)(A)(*2*) of this section, an individual is treated as having performed services as an employee of the ATEO and all related ATEOs for no more than 10 percent of the total hours the individual worked as an employee of the ATEO and all related organizations during the applicable year if the employee performed no more than 100 hours of service for the ATEO and all related ATEOs during the applicable year.

(iii) *Nonexempt funds exception*—(A) *In general.* An individual is disregarded for purposes of determining an ATEO's five highest-compensated employees for a taxable year if, for the applicable year, all of the following requirements are met:

(*1*) *Remuneration requirement.* Neither the ATEO, nor any related ATEO, nor any taxable related organization controlled by the ATEO (or by one or more related ATEOs, either alone or together with the ATEO) paid remuneration or granted a legally binding right to nonvested remuneration to the individual for services the individual performed as an employee of an ATEO;

(*2*) *Hours of service requirement.* The individual performed services as an employee of the ATEO and all related ATEOs for less than 50 percent of the total hours worked as an employee of the ATEO and all related organizations. For this purpose, an ATEO may instead use a percentage of total days worked by the employee, provided that any day that the employee works at least one hour for the ATEO or a related ATEO is treated as a full day worked for the ATEO and not for any other organization; and

(*3*) *Related organizations requirement.* No related organization that paid remuneration or granted a legally binding right to nonvested remuneration to the individual provided services for a fee to the ATEO, to any related ATEO, or to any taxable related organization controlled by the ATEO (or by one or more related ATEOs, either alone or together with the ATEO).

(B) *Certain payments disregarded.* For purposes of paragraph (d)(2)(iii)(A)(*1*) of this section, a payment made to the individual during the applicable year by a related organization that is an employer of the employee and for which the related organization is neither reimbursed by the ATEO nor entitled to any other consideration from the ATEO is not deemed paid by the ATEO under § 53.4960–2(b)(1) and a payment made to the individual during the applicable year by a related organization is not treated as paid by the ATEO under § 53.4960–2(b)(2).

(iv) *Limited services exception.* An employee is disregarded for purposes of determining an ATEO's five highest-compensated employees for a taxable year even though the ATEO paid remuneration to the employee if, for the applicable year, disregarding § 53.4960–2(b)(2), all of the following requirements are met:

(A) *Remuneration requirement.* The ATEO did not pay 10 percent or more of the employee's total remuneration for services performed as an employee of the ATEO and all related organizations; and

(B) *Related organization requirement.* The ATEO had at least one related ATEO and one of the following conditions apply:

(*1*) *Ten percent remuneration condition.* A related ATEO paid at least 10 percent of the remuneration paid by the ATEO and all related organizations; or

(*2*) *Less remuneration condition.* No related ATEO paid at least 10 percent of the total remuneration paid by the ATEO and all related organizations and the ATEO paid less remuneration to the employee than at least one related ATEO.

(3) *Examples.* The following examples illustrate the rules of this paragraph (d). For purposes of these examples, assume any entity referred to as ''ATEO'' is an ATEO, any entity referred to as ''CORP'' is not an ATEO and is not a publicly-held company within the meaning of section 162(m)(2) unless otherwise stated, and each entity has a calendar year taxable year.

(i) *Example 1 (Employee of two related ATEOs)*—(A) *Facts.* ATEO 1 and ATEO 2 are related organizations and have no other related organizations. Both employ Employee A during calendar year 2021 and pay remuneration to Employee A for Employee A's services. During 2021, Employee A performed services for 1,000 hours as an employee of ATEO 1 and 1,000 hours as an employee of ATEO 2.

(B) *Conclusion.* Employee A may be a covered employee of both ATEO 1 and ATEO 2 as one of the five highest-compensated employees for taxable year 2021 under paragraph (d)(2)(i) of this section because the exceptions in paragraphs (d)(2)(ii) through (iv) of this section do not apply. Because they are related organizations, ATEO 1 and ATEO 2 must each include the remuneration paid to Employee A by the other during each of their applicable years in determining their

respective five highest-compensated employees for taxable year 2021.

(ii) *Example 2 (Employee of an ATEO and a related non-ATEO)*—(A) *Facts.* Assume the same facts as in paragraph (d)(3)(i) of this section (Example 1), except that ATEO 1 is instead CORP 1.

(B) *Conclusion (CORP 1).* For taxable year 2021, CORP 1 is not an ATEO and therefore does not need to identify covered employees.

(C) *Conclusion (ATEO 2).* Employee A may be a covered employee of ATEO 2 as one of its five highest-compensated employees for taxable year 2021 under paragraph (d)(2)(i) of this section because no exception in paragraphs (d)(2)(ii) through (iv) of this section applies. ATEO 2 must include the remuneration paid to Employee A by CORP 1 during its applicable year in determining ATEO 2's five highest-compensated employees for taxable year 2021.

(iii) *Example 3 (Amounts for which a deduction is disallowed under section 162(m) are taken into account for purposes of determining the five highest-compensated employees)*—(A) *Facts.* CORP 2 is a publicly-held corporation within the meaning of section 162(m)(2) and is a related organization of ATEO 3. ATEO 3 is a corporation that is part of CORP 2's affiliated group (as defined in section 1504, without regard to section 1504(b)) and has no other related organizations. Employee B is a covered employee (as defined in section 162(m)(3)) of CORP 2 and an employee of ATEO 3. In 2021, CORP 2 paid Employee B $8 million of remuneration for services provided as an employee of CORP 2 and ATEO 3 paid Employee B $500,000 of remuneration for services provided as an employee of ATEO 3. $7.5 million of the remuneration is compensation for which a deduction is disallowed pursuant to section 162(m)(1).

(B) *Conclusion.* The $7.5 million of remuneration for which a deduction is disallowed under section 162(m)(1) is taken into account for purposes of determining ATEO 3's five highest-compensated employees. Thus, ATEO 3 is treated as paying Employee B $8.5 million of remuneration for purposes of determining its five highest-compensated employees.

(iv) *Example 4 (Employee disregarded due to receiving no remuneration)*—(A) *Facts.* Employee C is an officer of ATEO 4. In 2021, neither ATEO 4 nor any related organization paid remuneration or granted a legally binding right to any nonvested remuneration to Employee C. ATEO 4 paid premiums for insurance for liability arising from Employee C's service with ATEO 4, which is properly treated as a working condition fringe benefit excluded from gross income under § 1.132–5.

(B) *Conclusion.* Employee C is disregarded for purposes of determining ATEO 4's five highest-compensated employees for taxable year 2021 under paragraph (d)(2)(i) of this section because neither ATEO 4 nor any related organization paid Employee C any remuneration (nor did they grant a legally binding right to nonvested remuneration) in applicable year 2021. The working condition fringe benefit is not wages within the meaning of section 3401(a), as provided in section 3401(a)(19), and thus is not remuneration within the meaning of § 53.4960–2(a).

(v) *Example 5 (Limited hours exception)*—(A) *Facts.* ATEO 5 and CORP 3 are related organizations. ATEO 5 has no other related organizations and does not control CORP 3. Employee D is an employee of CORP 3. As part of Employee D's duties at CORP 3, Employee D serves as an officer of ATEO 5. Only CORP 3 paid remuneration (or granted a legally binding right to nonvested remuneration) to Employee D and ATEO 5 did not reimburse CORP 3 for any portion of Employee D's remuneration in any manner. During 2021, Employee D provided services as an employee for 2,000 hours to CORP 3 and 200 hours to ATEO 5.

(B) *Conclusion.* Employee D is disregarded for purposes of determining ATEO 5's five highest-compensated employees for taxable year 2021. Employee D qualifies for the exception under paragraph (d)(2)(ii) of this section because only CORP 3 paid Employee D any remuneration or granted a legally binding right to nonvested remuneration in applicable year 2021 and Employee D provided services as an employee to ATEO 5 for 200 hours, which is not more than ten percent of the total hours (2000 + 200 = 2200) worked as an employee of ATEO 5 and all related organizations (200/2200 = 9 percent).

(vi) *Example 6 (Limited hours exception)*—(A) *Facts.* Assume the same facts as in paragraph (d)(3)(v) of this section (Example 5), except that ATEO 5 also provides a reasonable allowance for expenses incurred by Employee D in executing Employee D's duties as an officer of ATEO 5, which is properly excluded from gross income under an accountable plan described in § 1.62–2.

(B) *Conclusion.* The conclusion is the same as in paragraph (d)(3)(v)(B) of this section (Example 5). Specifically, Employee D is disregarded for purposes of determining ATEO 5's five highest-compensated employees for taxable year 2021 under paragraph (d)(2)(ii) of this section because the expense allowance under the accountable plan is excluded from wages within the meaning of section 3401(a), as provided in § 31.3401(a)–4, and thus is not remuneration within the meaning of § 53.4960–2(a).

(vii) *Example 7 (No exception applies due to source of payment)*—(A) *Facts.* Assume the same facts as in paragraph (d)(3)(v) of this section (Example 5), except that ATEO 5 has a contractual arrangement with CORP 3 to reimburse CORP 3 for the hours of service Employee D provides to ATEO 5 during applicable year 2021 by paying an amount equal to the total remuneration received by Employee D from both ATEO 5 and CORP 3 multiplied by a fraction equal to the hours of service Employee D provided ATEO 5 over Employee D's total hours of service to both ATEO 5 and CORP 3.

(B) *Conclusion.* Employee D may be one of ATEO 5's five highest-compensated employees for taxable year 2021 under paragraph (d)(2)(i) of this section because the exceptions in paragraphs (d)(2)(ii) through (iv) of this section do not apply. Pursuant to the contractual arrangement between CORP 3 and ATEO 5, ATEO 5 reimburses CORP 3 for a portion of Employee D's remuneration during applicable year 2021; thus, the exceptions under paragraphs (d)(2)(ii) and (iii) of this section do not apply. Further, while ATEO 5 paid Employee D less than 10 percent of the total remuneration from ATEO 5 and all related organizations (200 hours of service to ATEO 5/2200 hours of service to ATEO 5 and all related organizations = 9.09 percent), it had no related ATEO; thus, the limited services exception under paragraph (d)(2)(iv) of this section does not apply.

(viii) *Example 8 (Nonexempt funds exception)*—(A) *Facts.* Assume the same facts as in paragraph (d)(3)(v) of this section (Example 5), except that during applicable year 2021, Employee D provided services as an employee for 1,000 hours to CORP 3 and 900 hours to ATEO 5 and CORP 3 provided no services to ATEO 5 for a fee.

(B) *Conclusion.* Employee D is disregarded for purposes of determining ATEO 5's five highest-compensated employees for taxable year 2021 under paragraph (d)(2)(iii) of this section because Employee D works less than 50 percent of the year providing services for ATEO 5, and only CORP 3 paid any remuneration to Employee D during applicable year 2021.

(ix) *Example 9 (Limited services exception)*—(A) *Facts.* ATEO 6, ATEO 7, ATEO 8, and ATEO 9 are a group of related organizations, none of which have any other related organizations. During 2021, Employee E is an employee of ATEO 6, ATEO 7, ATEO 8, and ATEO 9. During applicable year 2021, ATEO 6 paid 5 percent of Employee E's remuneration, ATEO 7 paid 10 percent of Employee E's remuneration, ATEO 8 paid 25 percent of Employee E's remuneration, and ATEO 9 paid 60 percent of Employee E's remuneration. No exception under paragraph (d)(2)(ii) or (iii) applies to Employee E for any of ATEO 6, ATEO 7, ATEO 8, or ATEO 9.

(B) *Conclusion (ATEO 6).* Employee E is disregarded for purposes of determining ATEO 6's five highest-compensated employees for taxable year 2021 under paragraph (d)(2)(iv) of this section because ATEO 6 paid less than 10 percent of Employee E's total remuneration from ATEO 6 and all related organizations during applicable year 2021 and another related ATEO paid at least 10 percent of that total remuneration.

(C) *Conclusion (ATEO 7, ATEO 8, and ATEO 9).* Employee E may be one of the five highest-compensated employees of ATEO 7, ATEO 8, and ATEO 9 for taxable year 2021 because each of those ATEOs paid 10 percent or more of E's remuneration during the 2021 applicable year. Thus, the limited services exception under paragraph (d)(2)(iv) of this section does not apply.

(x) *Example 10 (Limited services exception)*—(A) *Facts.* Assume the same facts as in paragraph (d)(3)(ix) of this section (Example 9), except that for applicable year 2021, ATEO 6, ATEO 7, and ATEO 8 each paid 5 percent of Employee E's remuneration, ATEO 9 paid 6 percent of E's remuneration, and Employee E also works as an employee of CORP 4, a related organization of ATEO 6, ATEO 7, ATEO 8, and ATEO 9 that paid 79 percent of Employee E's remuneration for applicable year 2021.

(B) *Conclusion (ATEO 9).* Employee E may be one of ATEO 9's five highest compensated

employees for taxable year 2021. Although ATEO 9 did not pay Employee E 10 percent or more of the total remuneration paid by ATEO 9 and all of its related organizations, no related ATEO paid more than 10 percent of Employee E's remuneration, and ATEO 9 did not pay less remuneration to employee E than at least one related ATEO. Thus, the limited services exception under paragraph (d)(2)(iv) of this section does not apply, and Employee E may be one of ATEO 9's five highest-compensated employees because ATEO 9 paid more remuneration than any other related ATEO.

(C) *Conclusion (ATEO 6, ATEO 7, and ATEO 8).* Employee E is disregarded for purposes of determining the five highest-compensated employees of ATEO 6, ATEO 7, and ATEO 8 for taxable year 2021 under paragraph (d)(2)(iv) of this section because none paid 10 percent or more of Employee F's total remuneration, each had no related ATEO that paid at least 10 percent of Employee E's total remuneration, and each paid less remuneration than at least one related ATEO (ATEO 9).

(e) *Employee*—(1) *In general. Employee* means an employee as defined in section 3401(c) and § 31.3401(c)–1. Section 31.3401(c)–1 generally defines an employee as any individual performing services if the relationship between the individual and the person for whom the individual performs services is the legal relationship of employer and employee. As set forth in § 31.3401(c)–1, this includes common law employees, as well as officers and employees of government entities, whether or not elected. An employee generally also includes an officer of a corporation, but an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives, nor is entitled to receive, any remuneration is not considered to be an employee of the corporation solely due to the individual's status as an officer of the corporation. Whether an individual is an employee depends on the facts and circumstances.

(2) *Directors.* A director of a corporation (or an individual holding a substantially similar position in a corporation or other entity) in the individual's capacity as such is not an employee of the corporation. See § 31.3401(c)–1(f).

(3) *Trustees.* The principles of paragraph (e)(2) of this section apply by analogy to a trustee of any arrangement classified as a trust for Federal tax purposes in § 301.7701–4(a).

(f) *Employer*—(1) *In general. Employer* means an employer within the meaning of section 3401(d), without regard to section 3401(d)(1) or (2), meaning generally the person or governmental entity for whom the services were performed as an employee. Whether a person or governmental entity is the employer depends on the facts and circumstances, but a person does not cease to be the employer through use of a payroll agent under section 3504, a common paymaster under section 3121(s), a person described in section 3401(d)(1) or (2), a certified professional employer organization under section 7705, or any similar arrangement.

(2) *Disregarded entities.* In the case of a disregarded entity described in § 301.7701–3, § 301.7701–2(c)(2)(iv) does not apply; thus, the sole owner of the disregarded entity is treated as the employer of any individual performing services as an employee of the disregarded entity.

(g) *Medical services*—(1) *Medical and veterinary services*—(i) *In general. Medical services* means services directly performed by a licensed medical professional (as defined in paragraph (g)(2) of this section) for the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; services provided for the purpose of affecting any structure or function of the human or animal body; and other services integral to providing such medical services. For purposes of section 4960, teaching and research services are not medical services except to the extent that they involve the services performed to directly diagnose, cure, mitigate, treat, or prevent disease or affect a structure or function of the body. Administrative services may be integral to directly providing medical services. For example, documenting the care and condition of a patient is integral to providing medical services, as is accompanying another licensed professional as a supervisor while that medical professional provides medical services. However, managing an organization's operations, including scheduling, staffing, appraising employee performance, and other similar functions that may relate to a particular medical professional or professionals who perform medical services, is not integral to providing medical services. See § 53.4960–2–(a)(2)(ii) for rules regarding allocating remuneration paid to a medical professional who performs both medical services and other services.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (g):

(A) *Example 1 (Administrative tasks that are integral to providing medical services)*—(*1*) *Facts.* Employee A is a doctor who is licensed to practice medicine in the state in which Employee A's place of employment is located. In the course of Employee A's practice, Employee A treats patients and performs some closely-related administrative tasks, such as examining and updating patient records.

(*2*) *Conclusion.* Employee A's administrative tasks are integral to providing medical services and thus are medical services.

(B) *Example 2 (Administrative tasks that are not integral to providing medical services)*—(*1*) *Facts.* Assume the same facts as in paragraph (g)(1)(ii)(A)(*1*) of this section (Example 1), except that Employee A also performs additional administrative tasks such as analyzing the budget, authorizing capital expenditures, and managing human resources for the organization by which Employee A is employed.

(*2*) *Conclusion.* Employee A's additional administrative tasks are not integral to providing medical services and thus are not medical services.

(C) *Example 3 (Teaching duties that are and are not medical services)*—(*1*) *Facts.* Employee B is a medical doctor who is licensed to practice medicine in the state in which her place of employment, a university hospital, is located. Employee B's duties include overseeing and teaching a group of resident physicians who have restricted licenses to practice medicine. Those duties include supervising and instructing the resident physicians while they treat patients and instruction in a classroom setting.

(*2*) *Conclusion.* Employee B's supervision and instruction of resident physicians during the course of patient treatment are necessary for the treatment, and thus are medical services. Employee B's classroom instruction is not necessary for patient treatment, and thus is not medical services.

(D) *Example 4 (Research services that are and are not medical services)*—(*1*) *Facts.* Employee C is a licensed medical doctor who is employed to work on a research trial. Employee C provides an experimental treatment to patients afflicted by a disease and performs certain closely-related administrative tasks that ordinarily are performed by a medical professional in a course of patient treatment. As part of the research trial, Employee C also compiles and analyzes patient results and prepares reports and articles that would not ordinarily be prepared by a medical professional in the course of patient treatment.

(*2*) *Conclusion.* Employee C's services that are ordinarily performed by a medical professional in a course of treatment, including closely-related administrative tasks, are medical services. Because the compilation and analysis of patient results and the formulation of reports and articles are neither services ordinarily performed by a medical professional in a course of treatment nor necessary for such treatment, these services are not medical services.

(2) *Definition of licensed medical professional. Licensed medical professional* means an individual who is licensed under applicable state or local law to perform medical services, including as a doctor, nurse, nurse practitioner, dentist, veterinarian, or other licensed medical professional.

(h) *Predecessor*—(1) *Asset acquisitions.* If an ATEO (acquiror) acquires at least 80 percent of the operating assets or total assets (determined by fair market value on the date of acquisition) of another ATEO (target), then the target is a predecessor of the acquiror. For an acquisition of assets that occurs over time, only assets acquired within a 12-month period are taken into account to determine whether at least 80 percent of the target's operating assets or total assets were acquired. However, this 12-month period is extended to include any continuous period that ends or begins on any day during which the acquiror has an arrangement to purchase, directly or indirectly, assets of the target. Additions to the assets of target made as part of a plan or arrangement to avoid the application of this subsection to acquiror's purchase of target's assets are disregarded in applying this paragraph. This paragraph (h)(1) applies for purposes of determining whether an employee is a covered employee under paragraph (d)(1) of this section only with respect to a covered employee of the target who commences the performance of services for the acquiror (or a related organization with respect to the acquiror) within the period beginning 12 months before and ending 12 months after the date of the transaction as defined in paragraph (h)(7) of this section.

(2) *Corporate reorganizations.* A predecessor of an ATEO includes another separate ATEO the stock or assets of which are acquired in a corporate reorganization as defined in section 368(a)(1)(A), (C), (D), (E), (F), or (G) (including by reason of section 368(a)(2)).

(3) *Predecessor change of form or of place of organization.* An ATEO that restructured by changing its organizational form or place of organization (or both) is a predecessor of the restructured ATEO.

(4) *ATEO that becomes a non-ATEO*—(i) *General rule.* An organization is a predecessor of an ATEO if it ceases to be an ATEO and then again becomes an ATEO effective on or before the predecessor end date. The *predecessor end date* is the date that is 36 months following the date that the organization's Federal information return under section 6033 (or, for an ATEO described in paragraph (b)(1)(ii) or (iii) of this section, its Federal income tax return under section 6011(a)) is due (or would be due if the organization were required to file), excluding any extension, for the last taxable year for which the organization previously was an ATEO. If the organization becomes an ATEO again effective after the predecessor end date, then the former ATEO is treated as a separate organization that is not a predecessor of the current ATEO.

(ii) *Intervening changes or entities.* If an ATEO that ceases to be an ATEO (former ATEO) would be treated as a predecessor to an organization that becomes an ATEO before the predecessor end date (successor ATEO), and if the former ATEO would be treated as a predecessor to each intervening entity (if such intervening entities had been ATEOs) under the rules of this paragraph (h), then the former ATEO is a predecessor of the successor ATEO. For example, if ATEO 1 loses its tax-exempt status and then merges into Corporation X, Corporation X then merges into Corporation Y, and Corporation Y becomes an ATEO before the predecessor end date, then ATEO 1 is a predecessor of Corporation Y.

(5) *Predecessor of a predecessor.* A reference to a predecessor includes any predecessor or predecessors of such predecessor, as determined under these rules.

(6) *Elections under sections 336(e) and 338.* For purposes of this paragraph (h), when an ATEO organized as a corporation makes an election to treat as an asset purchase either the sale, exchange, or distribution of stock pursuant to regulations under section 336(e) or the purchase of stock pursuant to regulations under section 338, the corporation that issued the stock is treated as the same corporation both before and after such transaction.

(7) *Date of transaction.* For purposes of this paragraph (h), the date that a transaction is treated as having occurred is the date on which all events necessary to complete the transaction described in the relevant provision have occurred.

(i) *Related organization*—(1) *In general. Related organization* means any person or governmental entity, domestic or foreign, that meets any of the following tests:

(i) *Controls or controlled by test.* The person or governmental entity controls, or is controlled by, the ATEO;

(ii) *Controlled by same persons test.* The person or governmental entity is controlled by one or more persons that control the ATEO;

(iii) *Supported organization test.* The person or governmental entity is a supported organization (as defined in section 509(f)(3)) with respect to the ATEO;

(iv) *Supporting organization test.* The person or governmental entity is a supporting organization described in section 509(a)(3) with respect to the ATEO; or

(v) *VEBA test.* With regard to an ATEO that is a voluntary employees' beneficiary association described in section 501(c)(9), the person or governmental entity establishes, maintains, or makes contributions to such voluntary employees' beneficiary association.

(2) *Control*—(i) *In general.* Control may be direct or indirect. For rules concerning application of the principles of section 318 in applying this paragraph (i)(2), see paragraph (i)(2)(vii) of this section.

(ii) *Stock corporation.* A person or governmental entity controls a stock corporation if it owns (by vote or value) more than 50 percent of the stock in the stock corporation.

(iii) *Partnership.* A person or governmental entity controls a partnership if it owns more than 50 percent of the profits interests or capital interests in the partnership.

(iv) *Trust.* A person or governmental entity controls a trust if it owns more than 50 percent of the beneficial interests in the trust, determined by actuarial value.

(v) *Nonstock organization*—(A) *In general.* A person or governmental entity controls a nonstock organization if more than 50 percent of the trustees or directors of the nonstock organization are either representatives of, or directly or indirectly controlled by, the person or governmental entity. A *nonstock organization* is a nonprofit organization or other organization without owners and includes a governmental entity.

(B) *Control of a trustee or director of a nonstock organization.* A person or governmental entity controls a trustee or director of the nonstock organization if the person or governmental entity has the power (either at will or at regular intervals) to remove such trustee or director and designate a new one.

(C) *Representatives.* Trustees, directors, officers, employees, or agents of a person or governmental entity are deemed representatives of the person or governmental entity. However, an employee of a person or governmental entity (other than a trustee, director, or officer, or an employee who possesses at least the authority commonly exercised by an officer) who is a director or trustee of a nonstock organization (or acting in that capacity) will not be treated as a representative of the person or governmental entity if the employee does not act as a representative of the person or governmental entity and that fact is reported in the form and manner prescribed by the Commissioner in forms and instructions.

(vi) *Brother-sister related organizations.* Under paragraph (i)(1)(ii) of this section, an organization is a related organization with respect to an ATEO if one or more persons control both the ATEO and the other organization. In the case of control by multiple persons, the control tests described in this paragraph (i)(2) of this section apply to the persons as a group. For example, if 1,000 individuals who are members of both ATEO 1 and ATEO 2 elect a majority of the board members of each organization, then ATEO 1 and ATEO 2 are related to each other because the same group of 1,000 persons controls both ATEO 1 and ATEO 2.

(vii) *Section 318 principles*—(A) *In general.* Section 318 (relating to constructive ownership of stock) applies in determining ownership of stock in a corporation. The principles of section 318 also apply for purposes of determining ownership of interests in a partnership or in a trust with beneficial interests. For example, applying the principles of section 318(a)(1)(A), an individual is considered to own the partnership interest or trust interest owned, directly or indirectly, by or for the family members specified in such section.

(B) *Nonstock organizations*—(*1*) *Attribution of ownership interest from a nonstock organization to a controlling person.* If a person or governmental entity controls a nonstock organization, the person or governmental entity is treated as owning a percentage of the stock (or partnership interest or beneficial interest in a trust) owned by the nonstock organization in accordance with the percentage of trustees or directors of the nonstock organization that are representatives of, or directly or indirectly controlled by, the person or governmental entity.

(*2*) *Attribution of ownership interest from a controlling person to a nonstock organization.* If a person or governmental entity controls a nonstock organization, the nonstock organization is treated as owning a percentage of the stock (or partnership interest or beneficial interest in a trust) owned by the person or governmental entity in accordance with the percentage of trustees or directors of the nonstock organization that are representatives of, or directly or indirectly controlled by, the person or governmental entity.

(*3*) *Indirect control of a nonstock organization through another nonstock organization.* If a person or governmental entity controls one nonstock organization that controls a second nonstock organization, the person or governmental entity is treated as controlling the second nonstock organization if the product of the percentage of trustees or directors of the first nonstock organization that are representatives of, or directly or indirectly controlled by, the person or governmental entity, multiplied by the percentage of trustees or directors of the second nonstock organization that are representatives of, or directly or indirectly controlled by, the person or governmental entity or first nonstock organization, exceeds 50 percent. Similar principles apply to successive tiers of nonstock organizations.

(*4*) *Attribution of control of nonstock organization to family member.* An individual's control of a nonstock organization or of a trustee or director of a nonstock organization is attributed to the members of the individual's family (as set forth in section 318(a)(1) and the regulations thereunder), subject to the limitation of section 318(a)(5)(B) and the regulations thereunder.

(3) *Examples.* The following examples illustrate the principles of this paragraph (i). For purposes of these examples, assume any entity referred to as ''ATEO'' is an ATEO and any entity referred to as ''CORP'' is not an ATEO.

(i) *Example 1 (Related through a chain of control)*—(A) *Facts.* ATEO 1, ATEO 2, and ATEO 3 are nonstock organizations. ATEO 3 owns 80 percent of the stock (by value) of corporation CORP 1. Eighty percent of ATEO 2's directors are representatives of ATEO 1. In addition, 80 percent of ATEO 3's directors are representatives of ATEO 1.

(B) *Conclusion.* ATEO 1 is a related organization with respect to ATEO 2 (and vice versa) because more than 50 percent of ATEO 2's directors are representatives of ATEO 1; thus, ATEO 1 controls ATEO 2. Based on the same analysis, ATEO 1 is also a related organization with respect to ATEO 3 (and vice versa). CORP 1 is a related organization with respect to ATEO 3 because, as the owner of more than 50 percent of CORP 1's stock, ATEO 3 controls CORP 1. Applying the principles of section 318, ATEO 1 is deemed to own 64 percent of the stock of CORP 1 (80 percent of ATEO 3's stock in CORP 1). Thus, CORP 1 is a related organization with respect to ATEO 1 because ATEO 1 controls CORP 1. ATEO 2 is a related organization with respect to ATEO 3, ATEO 3 is a related organization with respect to ATEO 2, and CORP 1 is a related organization with respect to ATEO 2 because ATEO 2, ATEO 3, and CORP 1 are all controlled by the same person (ATEO 1).

(ii) *Example 2 (Not related through a chain of control)*—(A) *Facts.* ATEO 4, ATEO 5, and ATEO 6 are nonstock organizations. Sixty percent of ATEO 5's directors are representatives of ATEO 4. In addition, 60 percent of ATEO 6's directors are representatives of ATEO 5, but none are representatives of ATEO 4.

(B) *Conclusion.* ATEO 4 is a related organization with respect to ATEO 5 (and vice versa) because more than 50 percent of ATEO 5's directors are representatives of ATEO 4; thus, ATEO 4 controls ATEO 5. Based on the same analysis, ATEO 6 is a related organization with respect to ATEO 5 (and vice versa). Applying the principles of section 318, ATEO 4 is deemed to control 36 percent of ATEO 6's directors (60 percent of ATEO 5's 60 percent control over ATEO 6). Because less than 50 percent of ATEO 6's directors are representatives of ATEO 4, and absent any facts suggesting that ATEO 4 directly or indirectly controls ATEO 6, ATEO 4 and ATEO 6 are not related organizations with respect to each other.

**§ 53.4960–2 Determination of remuneration paid for a taxable year.**

(a) *Remuneration*—(1) *In general.* For purposes of section 4960, *remuneration* means any amount that is wages as defined in section 3401(a), excluding any designated Roth contribution (as defined in section 402A(c)) and including any amount required to be included in gross income under section 457(f). Remuneration includes amounts includible in gross income as compensation for services as an employee pursuant to a below-market loan described in section 7872(c)(1)(B)(i) (compensation-related loans). For example, see § 1.7872–15(e)(1)(i). Director's fees paid by a corporation to a director of the corporation are not remuneration, provided that if the director is also an employee of the corporation, the director's fees are excluded from remuneration only to the extent that they do not exceed fees paid to a director who is not an employee of the corporation or any related organization or, if there is no such director, they do not exceed reasonable director's fees.

(2) *Exclusion of remuneration for medical services*—(i) *In general. Remuneration* does not include the portion of any remuneration paid to a licensed medical professional that is for the performance of medical services by such professional.

(ii) *Allocation of remuneration for medical services and non-medical services.* If, during an applicable year, an employer pays a covered employee remuneration for providing both medical services and non-medical services, the employer must make a reasonable, good faith allocation between the remuneration for medical services and the remuneration for non-medical services. For example, if a medical doctor receives remuneration for providing medical services and administrative or management services, the employer must make a reasonable, good faith allocation between the remuneration for the medical services and the remuneration for the administrative or management services.

For this purpose, if an employment agreement or similar written arrangement sets forth the remuneration to be paid for particular services, that allocation of remuneration applies unless the facts and circumstances demonstrate that the amount allocated to medical services is unreasonable for those services or that the allocation was established for purposes of avoiding application of the excise tax under section 4960. If some or all of the remuneration is not reasonably allocated in an employment agreement or similar arrangement, an employer may use any reasonable allocation method. For example, an employer may use a representative sample of records, such as patient, insurance, and Medicare/Medicaid billing records or internal time reporting mechanisms to determine the time spent providing medical services, and then allocate remuneration to medical services in the proportion such time bears to the total hours the employee worked for the employer (and any related employer) for purposes of making a reasonable allocation of remuneration. Similarly, if some or all of the remuneration is not reasonably allocated in an employment agreement or other similar arrangement, an employer may use salaries or other remuneration paid by the employer or similarly situated employers for duties comparable to those the employee performs (for example, hospital administrator and physician) for purposes of making a reasonable allocation between remuneration for providing medical services and for providing non-medical services.

(iii) *Examples.* The following examples illustrate the rules of this paragraph (a)(2). For purposes of these examples, assume any entity referred to as ''ATEO'' is an ATEO.

(A) *Example 1 (Allocation based on employment agreement)*—(*1*) *Facts.* Employee A is a covered employee of ATEO 1. Employee A is a licensed medical professional who provides patient care services for ATEO 1 and also provides management and administrative services to ATEO 1 as the manager of a medical practice group within ATEO 1. The employment agreement between ATEO 1 and Employee A specifies that of Employee A's salary, 30 percent is allocable to Employee A's services as manager of the medical practice group and 70 percent is allocable to Employee A's services as a medical professional providing patient care services. The facts regarding Employee A's employment indicate the employment agreement provides a reasonable allocation and that the allocation was not established for purposes of avoiding application of the excise tax.

(*2*) *Conclusion.* Consistent with Employee A's employment agreement, ATEO 1 must allocate 30 percent of Employee A's salary to the provision of non-medical services and 70 percent of Employee A's salary to the provision of medical services. Accordingly, only the 30 percent portion of Employee A's salary allocated to the other, non-medical services is remuneration for purposes of paragraph (a) of this section.

(B) *Example 2 (Allocation based on billing records)*—(*1*) *Facts.* Assume the same facts as in paragraph (a)(2)(iii)(A) of this section (Example 1), except that the employment agreement does not allocate Employee A's salary between medical and non-medical services performed by Employee A. Based on a representative sample of insurance and Medicare billing records, as well as time reports that Employee A submits to ATEO 1, ATEO 1 determines that Employee A spends 50 percent of her work hours providing patient care and 50 percent of her work hours performing administrative and management services. ATEO 1 allocates 50 percent of Employee A's remuneration to medical services.

(*2*) *Conclusion.* ATEO 1's allocation of Employee A's salary is a reasonable, good faith allocation. Accordingly, only the 50 percent portion of Employee A's remuneration allocated to the non-medical services is remuneration for purposes of paragraph (a) of this section.

(b) *Source of payment*—(1) *Remuneration paid by a third party for employment by an employer.* Remuneration paid (or a grant of a legally binding right to nonvested remuneration) by a third-party payor (whether a related organization, payroll agent, or other entity) during an applicable year for services performed as an employee of an employer is deemed paid (or payable) by the employer, except as otherwise provided in § 53.4960–1(d)(2)(ii) and (iii).

(2) *Remuneration paid by a related organization for employment by the related organization.* Remuneration paid (or a grant of a legally binding right to nonvested remuneration) by a related organization to an ATEO's employee during an applicable year for services performed as an employee of the related organization is treated as paid (or payable) by the ATEO, except as otherwise provided in § 53.4960–1(d)(2)(ii) and (iii).

(c) *Applicable year in which remuneration is treated as paid*—(1) *In general.* Remuneration that is a regular wage within the meaning of § 31.3402(g)–1(a)(1)(ii) is treated as paid on the date it is actually or constructively paid and all other remuneration is treated as paid on the first date on which the remuneration is vested.

(2) *Vested remuneration.* Remuneration is *vested* if it is not subject to a substantial risk of forfeiture within the meaning of section 457(f)(3)(B) (regardless of whether the arrangement under which the remuneration is to be paid is deferred compensation described in section 457(f) or 409A). In general, an amount is subject to a substantial risk of forfeiture if entitlement to the amount is conditioned on the future performance of substantial services or upon the occurrence of a condition that is related to a purpose of the remuneration if the possibility of forfeiture is substantial. Except as provided in paragraph (c)(1) of this section, remuneration that is never subject to a substantial risk of forfeiture is considered paid on the first date the service provider has a legally binding right to the payment. For purposes of this section, a *plan* means a plan within the meaning of § 1.409A–1(c), an *account balance plan* means an account balance plan within the meaning of § 1.409A–1(c)(2)(i)(A), and a *nonaccount balance plan* means a nonaccount balance plan within the meaning of § 1.409A–1(c)(2)(i)(C). Net earnings on previously paid remuneration (described in paragraph (d)(2) of this section) that are not subject to a substantial risk of forfeiture are vested (and, thus, treated as paid) at the earlier of the date actually or constructively paid to the employee or the close of the applicable year in which they accrue. For example, the present value of a principal amount accrued to an employee's account under an account balance plan (under which the earnings and losses attributed to the account are based solely on a predetermined actual investment as determined under § 31.3121(v)(2)–1(d)(2)(i)(B) or a reasonable market interest rate) is treated as paid on the date vested, but the present value of any net earnings subsequently accrued on that amount (the increase in value due to the predetermined actual investment or a reasonable market interest rate) is treated as paid at the close of the applicable year in which they accrue. Similarly, while the present value of an amount accrued under a nonaccount balance (including earnings that accrued while the amount was nonvested) is treated as paid on the date it is first vested, the present value of the net earnings on that amount (the increase in the present value) is treated as paid at the close of the applicable year in which they accrue.

(3) *Change in related status during the year.* If a taxpayer becomes or ceases to be a related organization with respect to an ATEO during an applicable year, then only the remuneration paid by the taxpayer to an employee with respect to services performed as an employee of the related organization during the

portion of the applicable year during which the employer is a related organization is treated as paid by the ATEO. If an amount is treated as paid due to vesting in the year the taxpayer becomes or ceases to be a related organization with respect to the ATEO, then the amount is treated as paid by the ATEO only if the amount becomes vested during the portion of the applicable year that the taxpayer is a related organization with respect to the ATEO.

(d) *Amount of remuneration treated as paid*—(1) *In general.* For each applicable year, the amount of remuneration treated as paid by the employer to a covered employee is the sum of regular wages within the meaning of § 31.3402(g)–1(a)(1)(ii) actually or constructively paid during the applicable year and the present value (as determined under paragraph (e) of this section) of all other remuneration that vested during the applicable year. The amount of remuneration that vests during an applicable year is determined on an employer-by-employer basis with respect to each covered employee.

(2) *Earnings and losses on previously paid remuneration*—(i) *In general.* The amount of net earnings or losses on previously paid remuneration paid by an employer is determined on an employee-by-employee basis, such that amounts accrued with regard to one employee do not affect amounts accrued with regard to a different employee. Similarly, losses accrued on previously paid remuneration from one employer do not offset earnings accrued on previously paid remuneration from another employer. The amount of net earnings or losses on previously paid remuneration paid by the employer is determined on a net aggregate basis for all plans maintained by the employer in which the employee participates for each applicable year. For example, losses under an account balance plan may offset earnings under a nonaccount balance plan for the same applicable year maintained by the same employer for the same employee.

(ii) *Previously paid remuneration*—(A) *New covered employee.* For an individual who was not a covered employee for any prior applicable year, *previously paid remuneration* means, for the applicable year for which the individual becomes a covered employee, the present value of vested remuneration that was not actually or constructively paid or otherwise includible in the employee's gross income before the start of the applicable year plus any remuneration that vested during the applicable year but that is not actually or constructively paid or otherwise includible in the employee's gross income before the close of the applicable year.

(B) *Existing covered employee.* For an individual who was a covered employee for any prior applicable year, *previously paid remuneration* means, for each applicable year, the amount of remuneration that the employer treated as paid in the applicable year or for a prior applicable year but that is not actually or constructively paid or otherwise includible in the employee's gross income before the close of the applicable year. Actual or constructive payment or another event causing an amount of previously paid remuneration to be includible in the employee's gross income thus reduces the amount of previously paid remuneration.

(iii) *Earnings. Earnings* means any increase in the vested present value of previously paid remuneration as of the close of the applicable year, regardless of whether the plan denominates the increase as earnings. For example, an increase in the vested account balance of a nonqualified deferred compensation plan based solely on the investment return of a predetermined actual investment (and disregarding any additional contributions) constitutes earnings. Similarly, an increase in the vested present value of a benefit under a nonqualified nonaccount balance plan due solely to the passage of time (and disregarding any additional benefit accruals) constitutes earnings. However, an increase in an account balance of a nonqualified deferred compensation plan due to a salary reduction contribution or an employer contribution does not constitute earnings (and therefore may not be offset with losses). Likewise, an increase in the benefit under a nonaccount balance plan due to an additional year of service or an increase in compensation that is reflected in a benefit formula does not constitute earnings.

(iv) *Losses. Losses* means any decrease in the vested present value of previously paid remuneration as of the close of the applicable year, regardless of whether the plan denominates that decrease as losses.

(v) *Net earnings. Net earnings* means, for each applicable year, the amount (if any) by which the earnings accrued for the applicable year on previously paid remuneration exceeds the sum of the losses accrued on previously paid remuneration for the applicable year and any net losses carried forward from a previous taxable year.

(vi) *Net losses. Net losses* means, for each applicable year, the amount (if any) by which the sum of the losses accrued on previously paid remuneration for the applicable year and any net losses carried forward from a previous taxable year exceed the earnings accrued for the applicable year on previously paid remuneration. Losses may only be used to offset earnings and thus do not reduce the remuneration treated as paid for an applicable year except to the extent of the earnings accrued for that applicable year. However, with regard to a covered employee, an employer may carry net losses forward to the next applicable year and offset vested earnings for purposes of determining net earnings or losses for that subsequent applicable year. For example, if a covered employee who participates in a nonaccount balance plan and an account balance plan vests in an amount of earnings under the nonaccount balance plan and has losses under the account balance plan that exceed the vested earnings treated as remuneration under the nonaccount balance plan, those excess losses are carried forward to the next applicable year and offset vested earnings for purposes of determining net earnings or losses for that applicable year. If, for the next applicable year, there are not sufficient earnings to offset the entire amount of losses carried forward from the previous year (and any additional losses), the offset process repeats for each subsequent applicable year until there are sufficient earnings for the applicable year to offset any remaining losses carried forward.

(3) *Remuneration paid for a taxable year before the employee becomes a covered employee*—(i) *In general.* In accordance with the payment timing rules of paragraph (c) of this section, any remuneration that is vested but is not actually or constructively paid or otherwise includible in an employee's gross income as of the close of the applicable year for the taxable year immediately preceding the taxable year in which the employee first becomes a covered employee of an ATEO is treated as previously paid remuneration for the taxable year in which the employee first becomes a covered employee. Net losses on this previously paid remuneration from any preceding applicable year do not carry forward to subsequent applicable years. However, net earnings and losses that vest on such previously paid remuneration in subsequent applicable years are treated as remuneration paid for a taxable year for which the employee is a covered employee.

(ii) *Examples.* The following examples illustrate the rules of this

paragraph (d)(3). For purposes of these examples, assume any organization described as ''ATEO'' is an ATEO.

(A) *Example 1 (Earnings on pre-covered employee remuneration)*—(*1*) *Facts.* ATEO 1 uses a taxable year beginning July 1 and ending June 30. Employee A becomes a covered employee of ATEO 1 for the taxable year beginning July 1, 2021, and ending June 30, 2022. During the 2020 applicable year, Employee A vests in $1 million of nonqualified deferred compensation. As of December 31, 2020, the present value of the amount deferred under the plan is $1.1 million. During the 2021 applicable year, ATEO 1 pays Employee A $1 million in regular wages. The present value as of December 31, 2021, of Employee A's nonqualified deferred compensation is $1.3 million.

(*2*) *Conclusion (Taxable year beginning July 1, 2020, and ending June 30, 2021).* ATEO 1 pays Employee A $1.1 million of remuneration in the 2020 applicable year. This is comprised of $1 million of vested nonqualified deferred compensation, and $100,000 of earnings, all of which is treated as paid for the taxable year beginning July 1, 2020, and ending June 30, 2021.

(*3*) *Conclusion (Taxable year beginning July 1, 2021, and ending June 30, 2022).* ATEO 1 pays Employee A $1.2 million of remuneration in the 2021 applicable year. This is comprised of $1 million regular wages and $200,000 of earnings ($1.3 million present value as of December 31, 2021, minus $1.1 million previously paid remuneration as of December 31, 2020).

(B) *Example 2 (Losses on pre-covered employee remuneration)*—(*1*) *Facts.* Assume the same facts as in paragraph (d)(3)(ii)(A) of this section (Example 1), except that the present value of the nonqualified deferred compensation as of December 31, 2020, is $900,000.

(*2*) *Conclusion (Taxable year beginning July 1, 2020, and ending June 30, 2021).* ATEO 1 pays Employee A $1 million of remuneration in the 2020 applicable year. This is comprised of $1 million of vested nonqualified deferred compensation. The present value of all vested deferred compensation as of December 31 of the 2020 applicable year ($900,000) is treated as previously paid remuneration for the next applicable year (as Employee A is a covered employee for the next taxable year). The $100,000 of losses accrued while Employee A was not a covered employee do not carry forward to the next applicable year.

(*3*) *Conclusion (Taxable year beginning July 1, 2021, and ending June 30, 2022).* ATEO 1 pays Employee A $1.4 million of remuneration in the 2021 applicable year. This is comprised of $1 million cash and $400,000 of earnings ($1.3 million present value as of December 31, 2021, minus $900,000 previously paid remuneration).

(e) *Calculation of present value*—(1) *In general.* The employer must determine present value using reasonable actuarial assumptions regarding the amount, time, and probability that a payment will be made. For this purpose, a discount for the probability that an employee will die before commencement of benefit payments is permitted, but only to the extent that benefits will be forfeited upon death. The present value may not be discounted for the probability that payments will not be made (or will be reduced) because of the unfunded status of the plan; the risk associated with any deemed or actual investment of amounts deferred under the plan; the risk that the employer, the trustee, or another party will be unwilling or unable to pay; the possibility of future plan amendments; the possibility of a future change in the law; or similar risks or contingencies. The present value of the right to future payments as of the vesting date includes any earnings that have accrued as of the vesting date that are not previously paid remuneration.

(2) *Treatment of future payment amount as present value for certain amounts.* For purposes of determining the present value of remuneration under a nonaccount balance that is scheduled to be actually or constructively paid within 90 days of vesting, the employer may treat the future amount that is to be paid as the present value at vesting.

(f) *Coordination with section 162(m)*—(1) *In general.* Remuneration paid by a publicly held corporation within the meaning of section 162(m)(2) to a covered employee within the meaning of section 162(m)(3) generally is taken into account for purposes of this section. Similarly, remuneration paid by a covered health insurance provider within the meaning of section 162(m)(6)(C) to an applicable individual within the meaning of section 162(m)(6)(F) generally is taken into account for purposes of this section. However, any amount of remuneration for which a deduction is disallowed by reason of section 162(m) is not taken into account for purposes of determining the amount of remuneration paid for a taxable year. Thus, if an amount of remuneration would be treated as paid under this section and a deduction for that amount is otherwise available but disallowed under section 162(m), that remuneration is not taken into account for purposes of determining the amount of remuneration paid for the taxable year under this section.

(2) *Five highest-compensated employees.* Solely for purposes of determining an ATEO's five highest-compensated employees under § 53.4960–1(d)(2), remuneration for which a deduction is disallowed by reason of section 162(m) is treated as paid by the ATEO in the applicable year in which the remuneration would otherwise be treated as paid under paragraph (c)(1) of this section.

(3) *Example.* The following example illustrates the rules of this paragraph (f). For purposes of this example, assume any entity referred to as ''ATEO'' is an ATEO, any entity referred to as ''CORP'' is not an ATEO, and that all entities use a calendar year taxable year.

(i) *Example (Remuneration disregarded because a deduction is disallowed under section 162(m) in the year of vesting)*—(A) *Facts.* CORP 1 is a publicly held corporation described in section 162(m)(2) that is not a health insurance issuer described in section 162(m)(6)(C). CORP 1 and ATEO 1 are related organizations and ATEO 1 is not a member of CORP 1's affiliated group (as defined in section 1504 (determined without regard to section 1504(b)). Employee A is a covered employee described in section 162(m)(3) of CORP 1 and a covered employee of ATEO 1. In 2021, CORP 1 pays Employee A $1.5 million as salary and ATEO 1 pays Employee A $500,000 as salary. But for application of section 162(m), the amount paid is otherwise deductible by CORP 1. The amount of remuneration subject to the deduction limitation under section 162(m)(1) is $500,000, the amount by which the compensation paid by CORP 1 exceeds the $1 million deduction limitation described in section 162(m)(1).

(B) *Conclusion.* The $500,000 not deductible under section 162(m) is not taken into account for purposes of determining the amount of remuneration paid by ATEO 1. Thus, ATEO 1 is generally treated as paying $1.5 million of remuneration to Employee A for the 2021 taxable year ($1 million salary from CORP 1 + $500,000 salary from ATEO 1). However, for purposes of determining ATEO 1's five highest-compensated employees for the 2021 applicable year, ATEO 1 is treated as paying $2 million of remuneration to Employee A ($1 million salary from CORP 1 that is deductible under section 162(m) + $500,000 salary from CORP 1 that is not deductible under section 162(m) + $500,000 salary from ATEO 1).

(g) *Examples.* The following examples illustrate the rules of this section. For purposes of these examples, assume any entity referred to as ''ATEO'' is an ATEO, any entity referred to as ''CORP'' is not an ATEO, and all entities use a calendar year taxable year.

(1) *Example 1 (Account balance plan)*—(i) *Facts.* Employee A is a covered employee of ATEO 1. Employee A participates in a nonqualified deferred compensation plan (the NQDC plan) in which the account balance is adjusted based on the investment returns on predetermined actual investments. On January 1, 2021, ATEO 1 credits $100,000 to Employee A's account under the plan, subject to the requirement that Employee A remain employed through June 30, 2023. On June 30, 2023, the vested account balance is $110,000. Due to earnings or losses on the account balance, the closing account balance on each of the following dates is: $115,000 on December 31, 2023, $120,000 on

December 31, 2024, $100,000 on December 31, 2025, and $110,000 on December 31, 2026. During 2027, Employee A defers an additional $10,000 under the plan, all of which is vested at the time of deferral. On December 31, 2027, the closing account balance is $125,000. In 2028, ATEO 1 distributes $10,000 to Employee A under the plan. On December 31, 2028, the closing account balance is $135,000 due to earnings on the account balance.

(ii) *Conclusion (2021 and 2022 applicable years—nonvested amounts).* For 2021 and 2022, ATEO 1 pays Employee A no remuneration attributable to Employee A's participation in the NQDC plan because the amount deferred under the plan remains subject to a substantial risk of forfeiture within the meaning of section 457(f)(3)(B).

(iii) *Conclusion (2023 applicable year—amounts in year of vesting).* For 2023, ATEO 1 pays Employee A $115,000 of remuneration attributable to Employee A's participation in the NQDC plan, including $110,000 of remuneration on June 30, 2023, when the vesting condition is met and the amount is no longer subject to a substantial risk of forfeiture within the meaning of section 457(f)(3)(B), and an additional $5,000 of earnings on the previously paid remuneration ($110,000) on December 31, 2023.

(iv) *Conclusion (2024 applicable year—earnings).* For 2024, ATEO 1 pays Employee A $5,000 of remuneration, the additional earnings on the previously paid remuneration ($115,000) as of December 31, 2024.

(v) *Conclusion (2025 applicable year—losses).* For 2025, ATEO 1 pays Employee A no remuneration attributable to Employee A's participation in the NQDC plan since the vested present value of the previously paid remuneration ($120,000) decreased to $100,000 as of December 31, 2025. The $20,000 loss for 2025 does not reduce any amount previously treated as remuneration but is available for carryover to subsequent taxable years to offset earnings.

(vi) *Conclusion (2026 applicable year—recovery of losses).* For 2026, ATEO 1 pays Employee A no remuneration attributable to Employee A's participation in the NQDC plan because the vested present value of the previously paid remuneration ($120,000) was $110,000 as of December 31, 2026. Due to increases on the account balance, ATEO 1 recovers $10,000 of the $20,000 of losses carried over from 2025. The net losses as of December 31, 2026, are $10,000, and none of the $10,000 in earnings during 2026 is remuneration paid in 2026.

(vii) *Conclusion (2027 applicable year—no recovery of losses against additional deferrals of compensation).* For 2027, ATEO 1 pays Employee A $10,000 of remuneration attributable to Employee A's participation in the NQDC plan. The additional $10,000 deferral is not subject to a substantial risk of forfeiture within the meaning of section 457(f)(3)(B) and thus is remuneration paid on the date credited to Employee A's account. This credit increases the amount of previously paid remuneration from $120,000 to $130,000. Additionally, due to earnings, ATEO 1 recovers $5,000 of the $10,000 loss carried over from 2026, none of which was remuneration for 2025, so that, as of December 31, 2027, the net loss available for carryover to 2028, is $5,000.

(viii) *Conclusion (2028 applicable year—distributions, recovery of remainder of losses through earnings and additional earnings).* For 2028, ATEO 1 pays Employee A $15,000 in remuneration attributable to Employee A's participation in the NQDC plan. The $10,000 distribution reduces the amount of previously paid remuneration (from $130,000 to $120,000) and the account balance (from $125,000 to $115,000). The vested present value of the account balance increases by $20,000 (from $115,000 to $135,000) as of December 31, 2028. Therefore, due to earnings, ATEO 1 recovers the remaining $5,000 loss carried over from 2027 (the difference between the $120,000 previously paid remuneration before earnings and the $115,000 account balance before earnings) and pays Employee A an additional $15,000 of remuneration as earnings (the difference between the $135,000 account balance after earnings and the $120,000 previously paid remuneration after loss recovery).

(2) *Example 2 (Nonaccount balance plan with earnings)*—(i) *Facts.* ATEO 2 and CORP 2 are related organizations. Employee B is a covered employee of ATEO 2 and is also employed by CORP 2. On January 1, 2021, CORP 2 and Employee B enter into an agreement (the agreement) under which CORP 2 will pay Employee B $100,000 on December 31, 2024, if B remains employed by CORP 2 through January 1, 2023. Employee B remains employed by CORP 2 through January 1, 2023. On January 1, 2023, the present value based on reasonable actuarial assumptions of the $100,000 to be paid on December 31, 2024, is $75,000. On December 31, 2023, the vested present value increases to $85,000 due solely to the passage of time. On December 31, 2024, CORP 2 pays Employee B $100,000.

(ii) *Conclusion (2021 and 2022 applicable years—nonvested amounts).* For 2021 and 2022, CORP 2 pays Employee B no remuneration under the agreement because the amount deferred under the agreement remains subject to a substantial risk of forfeiture within the meaning of section 457(f)(3)(B).

(iii) *Conclusion (2023 applicable year—amounts in year of vesting).* For 2023, CORP 2 pays Employee B $75,000 in remuneration under the agreement on January 1, 2023, which is the vested present value on that date of $100,000 payable on December 31, 2024. In addition, CORP 2 pays Employee B $10,000 in remuneration under the agreement on December 31, 2023, as earnings based on the increase in the vested present value of the previously paid remuneration (from $75,000 to $85,000) as of December 31, 2023.

(iv) *Conclusion (2024 applicable year—earnings and distribution of previously paid remuneration).* For 2024, CORP 2 pays Employee B $15,000 in remuneration under the agreement on December 31, 2024, as earnings based on the increase in the vested present value of the previously paid remuneration (from $85,000 to $100,000) as of December 31, 2024. In addition, the $100,000 distribution is treated as reducing the amount of previously paid remuneration ($100,000) to zero.

(3) *Example 3 (Treatment of amount payable as present value at vesting)*—(i) *Facts.* Employee C is a covered employee of ATEO 3. ATEO 3 uses a calendar year taxable year. Employee C participates in a nonqualified deferred compensation plan (the NQDC plan) under which ATEO 3 agrees to pay Employee C $100,000 two months after the date a specified performance goal that is a substantial risk of forfeiture within the meaning of section 457(f)(3)(B) is met. Employee C meets the performance goal on November 30, 2022. In accordance with § 53.4960–2(d)(2), because the payment is to be made within 90 days of vesting, ATEO 3 elects to treat the payment amount as the amount paid at vesting.

(ii) *Conclusion (2022 applicable year—election to treat amount payable within 90 days as paid at vesting).* For taxable year 2022, ATEO 3 pays Employee C $100,000 of remuneration attributable to Employee C's participation in the NQDC plan. Employee C vests in the $100,000 payment in 2022 upon meeting the performance goal. Under the general rule, ATEO 3 would be required to treat the present value as of November 30, 2022, of $100,000 payable in 2023 (two months after the date of vesting) as paid in 2022, the difference between that amount and the present value as of December 31, 2022, as earnings for 2022, and the difference between $100,000 and the present value as of December 31, 2022, as earnings for 2023. However, because ATEO 3 treated the amount of remuneration payable within 90 days of vesting as the amount paid at vesting in 2022, the entire $100,000 payable to Employee C in 2023 is treated as remuneration paid in 2022.

(4) *Example 4 (Aggregation of pay from related organizations)*—(i) *Facts.* Employee D is a covered employee of ATEO 4 and also an employee of CORP 4 and CORP 5. ATEO 4, CORP 4, and CORP 5 are related organizations. ATEO 4, CORP 4, and CORP 5 each pay Employee D $200,000 of salary during 2022 and 2023. On January 1, 2022, ATEO 4 promises to pay Employee D $120,000 on December 31, 2023, under a nonaccount balance plan, the present value of which is $100,000 on January 1, 2022, and both CORP 4 and CORP 5 contribute $100,000 on Employee D's behalf to an account balance plan. On December 31, 2022, the present value of the plan maintained by ATEO 4 is $110,000, the present value of the plan maintained by CORP 4 is $120,000, and the present value of the plan maintained by CORP 5 is $90,000. On December 31, 2023, the present value of the plan maintained by ATEO 4 is $120,000, the present value of the plan maintained by CORP 4 is $130,000, and the present value of the plan maintained by CORP 5 is $110,000.

(ii) *Conclusion (2022 applicable year).* For 2022, before aggregation of remuneration paid by related organizations, ATEO 4 paid Employee D $310,000 of remuneration ($200,000 salary + $100,000 upon vesting + $10,000 net earnings). CORP 4 paid Employee D $320,000 of remuneration ($200,000 salary + $100,000 upon vesting +

$20,000 net earnings). CORP 5 paid Employee D $300,000 of remuneration ($200,000 salary + $100,000 upon vesting) and has $10,000 of net losses, which are carried forward to 2023. Thus, ATEO 4 is treated as paying $930,000 of remuneration to Employee D for the applicable year.

(iii) *Conclusion (2023 applicable year).* For 2023, before aggregation of remuneration paid by related organizations, ATEO 4 paid Employee D $210,000 of remuneration ($200,000 salary + $10,000 earnings). CORP 4 paid Employee D $210,000 of remuneration ($200,000 salary + $10,000 net earnings). CORP 5 paid Employee D $300,000 of remuneration ($200,000 salary + $10,000 net earnings after taking into account the loss carryforward). Thus, ATEO 4 is treated as paying $630,000 of remuneration to Employee D for the applicable year.

**§ 53.4960–3 Determination of whether there is a parachute payment.**

(a) *Parachute payment*—(1) *In general.* Except as otherwise provided in paragraph (a)(2) of this section (relating to payments excluded from the definition of a parachute payment), *parachute payment* means any payment in the nature of compensation made by an ATEO (or a predecessor of the ATEO) or a related organization to (or for the benefit of) a covered employee if the payment is contingent on the employee's separation from employment with the employer, and the aggregate present value of the payments in the nature of compensation to (or for the benefit of) the individual that are contingent on the separation equals or exceeds an amount equal to 3-times the base amount.

(2) *Exclusions.* The following payments are not parachute payments:

(i) *Certain qualified plans.* A payment that is a contribution to or a distribution from a plan described in section 401(a) that includes a trust exempt from tax under section 501(a), an annuity plan described in section 403(a), a simplified employee pension (as defined in section 408(k)), or a simple retirement account described in section 408(p);

(ii) *Certain annuity contracts.* A payment made under or to an annuity contract described in section 403(b) or a plan described in section 457(b);

(iii) *Compensation for medical services.* A payment made to a licensed medical professional for the performance of medical services performed by such professional; and

(iv) *Payments to non-HCEs.* A payment made to an individual who is not a highly compensated employee (HCE) as defined in paragraph (a)(3) of this section.

(3) *Determination of HCEs for purposes of the exclusion from parachute payments.* For purposes of this section, *highly compensated employee* or *HCE* means, with regard to an ATEO that maintains a qualified retirement plan or other employee benefit plan described in § 1.414(q)–1T, Q/A–1, any person who is a highly compensated employee within the meaning of section 414(q) and, with regard to an ATEO that does not maintain such a plan, any person who would be a highly compensated employee within the meaning of section 414(q) if the ATEO did maintain such a plan. For purposes of determining the group of highly compensated employees for a determination year, consistent with § 1.414(q)–1T, Q/A–14(a)(1), the determination year calculation is made on the basis of the applicable plan year under § 1.414(q)–1T, Q/A–14(a)(2) of the plan or other entity for which a determination is made, and the look-back year calculation is made on the basis of the twelve-month period immediately preceding that year. For an ATEO that does not maintain a plan described in § 1.414(q)–1T, Q/A–1, the rules are applied by analogy, substituting the calendar year for the plan year. Thus, for example, in 2021, an ATEO that does not maintain such a plan must use its employees' 2020 annual compensation (as defined in § 1.414(q)–1T, Q/A–1, including any of the safe harbor definitions if applied consistently to all employees) to determine which employees are HCEs for 2021, if any, for purposes of section 4960. If an employee is an HCE at the time of separation from employment, then for purposes of section 4960 any parachute payment that is contingent on the separation from employment (as defined in paragraph (d) of this section) is treated as paid to an HCE so that the exception from the term parachute payment under paragraph (a)(2)(iv) of this section does not apply, even if the payment occurs during one or more later taxable years (that is, taxable years after the taxable year during which the employee separated from employment).

(b) *Payment in the nature of compensation*—(1) *In general.* Any payment—in whatever form—is a payment in the nature of compensation if the payment arises out of an employment relationship, including holding oneself out as available to perform services and refraining from performing services. Thus, for example, a payment made under a covenant not to compete or a similar arrangement is a payment in the nature of compensation. A payment in the nature of compensation includes (but is not limited to) wages and salary, bonuses, severance pay, fringe benefits, life insurance, pension benefits, and other deferred compensation (including any amount characterized by the parties as interest or earnings thereon). A payment in the nature of compensation also includes cash when paid, the value of the right to receive cash, the value of accelerated vesting, or a transfer of property. The vesting of an option, stock appreciation right, or similar form of compensation as a result of a covered employee's separation from employment is a payment in the nature of compensation. However, a payment in the nature of compensation does not include attorney's fees or court costs paid or incurred in connection with the payment of any parachute payment or a reasonable rate of interest accrued on any amount during the period the parties contest whether a parachute payment will be made.

(2) *Consideration paid by covered employee.* Any payment in the nature of compensation is reduced by the amount of any money or the fair market value of any property (owned by the covered employee without restriction) that is (or will be) transferred by the covered employee in exchange for the payment.

(c) *When payment is considered to be made*—(1) *In general.* A payment in the nature of compensation is considered made in the taxable year in which it is includible in the covered employee's gross income or, in the case of fringe benefits and other benefits that are excludible from income, in the taxable year the benefits are received. In the case of taxable non-cash fringe benefits provided in a calendar year, payment is considered made on the date or dates the employer chooses, but no later than December 31 of the calendar year in which the benefits are provided, except that when the fringe benefit is the transfer of personal property (either tangible or intangible) of a kind normally held for investment or the transfer of real property, payment is considered made on the actual date of transfer. If the fringe benefit is neither a transfer of personal property nor a transfer of real property, the employer may, in its discretion, treat the value of the benefit actually provided during the last two months of the calendar year as paid during the subsequent calendar year. However, an employer that treats the value of a benefit paid during the last two months of a calendar year as paid during the subsequent calendar year under this rule must treat the value of that fringe benefit as paid during the subsequent calendar year with respect to all employees who receive it.

(2) *Transfers of section 83 property.* A transfer of property in connection with the performance of services that is subject to section 83 is considered a

payment made in the taxable year in which the property is transferred or would be includible in the gross income of the covered employee under section 83, disregarding any election made by the employee under section 83(b) or (i). Thus, in general, such a payment is considered made at the later of the date the property is transferred (as defined in § 1.83–3(a)) to the covered employee or the date the property becomes substantially vested (as defined in §§ 1.83–3(b) and (j)). The amount of the payment is the compensation as determined under section 83, disregarding any amount includible in income pursuant to an election made by an employee under section 83(b).

(3) *Stock options and stock appreciation rights.* An option (including an option to which section 421 applies) is treated as property that is transferred when the option becomes vested (regardless of whether the option has a readily ascertainable fair market value as defined in § 1.83–7(b)). For purposes of determining the timing and amount of any payment related to the option, the principles of § 1.280G–1, Q/A–13 and any method prescribed by the Commissioner in published guidance of general applicability under § 601.601(d)(2) apply.

(d) *Payment contingent on an employee's separation from employment*—(1) *In general.* A payment is contingent on an employee's separation from employment if the facts and circumstances indicate that the employer would not make the payment in the absence of the employee's involuntary separation from employment. A payment generally would be made in the absence of the employee's involuntary separation from employment if it is substantially certain at the time of the involuntary separation from employment that the payment would be made whether or not the involuntary separation occurred. A payment the right to which is not subject to a substantial risk of forfeiture within the meaning of section 457(f)(3)(B) at the time of an involuntary separation from employment generally is a payment that would have been made in the absence of an involuntary separation from employment (and is therefore not contingent on a separation from employment), except that the increased value of an accelerated payment of a vested amount described in paragraph (f)(3) of this section resulting from an involuntary separation from employment is not treated as a payment that would have been made in the absence of an involuntary separation from employment. A payment the right to which is no longer subject to a substantial risk of forfeiture within the meaning of section 457(f)(3)(B) as a result of an involuntary separation from employment, including a payment the vesting of which is accelerated due to the separation from employment as described in paragraph (f)(3) of this section, is not treated as a payment that would have been made in the absence of an involuntary separation from employment (and thus is contingent on a separation from employment). A payment does not fail to be contingent on a separation from employment merely because the payment is conditioned upon the execution of a release of claims, noncompetition or nondisclosure provisions, or other similar requirements. See paragraph (d)(3) of this section for the treatment of a payment made pursuant to a covenant not to compete. If, after an involuntary separation from employment, the former employee continues to provide certain services as a nonemployee, payments for services rendered as a nonemployee are not payments that are contingent on a separation from employment to the extent those payments are reasonable and are not made on account of the involuntary separation from employment. Whether services are performed as an employee or nonemployee depends upon all the facts and circumstances. See § 53.4960–1(e). For rules on determining whether payments are reasonable compensation for services, the rules of § 1.280G–1, Q/A–40 through Q/A–42 (excluding Q/A–40(b) and Q/A–42(b)), and Q/A–44 are applied by analogy (substituting involuntary separation from employment for change in ownership or control).

(2) *Employment agreements*—(i) *In general.* If a covered employee involuntarily separates from employment before the end of a contract term and is paid damages for breach of contract pursuant to an employment agreement, the payment of damages is treated as a payment that is contingent on a separation from employment. An *employment agreement* is an agreement between an employee and employer that describes, among other things, the amount of compensation or remuneration payable to the employee for services performed during the term of the agreement.

(ii) *Example.* The following example illustrates the rules of this paragraph (d)(2). For purposes of this example, assume any entity referred to as ''ATEO'' is an ATEO.

(A) *Example*—(*1*) *Facts.* Employee A, a covered employee, has a three-year employment agreement with ATEO 1. Under the agreement, Employee A will receive a salary of $200,000 for the first year and, for each succeeding year, an annual salary that is $100,000 more than the previous year. The agreement provides that, in the event of A's involuntary separation from employment without cause, Employee A will receive the remaining salary due under the agreement. At the beginning of the second year of the agreement, ATEO 1 involuntarily terminates Employee A's employment without cause and pays Employee A $700,000 representing the remaining salary due under the employment agreement ($300,000 for the second year of the agreement plus $400,000 for the third year of the agreement).

(*2*) *Conclusion.* The $700,000 payment is treated as a payment that is contingent on a separation from employment.

(3) *Noncompetition agreements.* A payment under an agreement requiring a covered employee to refrain from performing services (for example, a covenant not to compete) is a payment that is contingent on a separation from employment if the payment would not have been made in the absence of an involuntary separation from employment. For example, a payment contingent on compliance in whole or in part with a covenant not to compete negotiated as part of a severance arrangement arising from an involuntary separation from employment is contingent on a separation from employment. Similarly, one or more payments contingent on compliance in whole or in part with a covenant not to compete not negotiated as part of a severance arrangement arising from an involuntary separation from employment but that provides for a payment specific to an involuntary separation from employment (and not voluntary separation from employment) is contingent on a separation from employment. Payments made under an agreement requiring a covered employee to refrain from performing services that are contingent on separation from employment are not treated as paid in exchange for the performance of services and are not excluded from parachute payments.

(4) *Payment of amounts previously included in income or excess remuneration.* Actual or constructive payment of an amount that was previously included in gross income of the employee is not a payment contingent on a separation from employment. For example, payment of an amount included in income under section 457(f)(1)(A) due to the lapsing of a substantial risk of forfeiture on a date before the separation from employment generally is not a payment that is contingent on a separation from employment, even if the amount is paid in cash or otherwise to the employee because of the separation from

employment. In addition, actual or constructive receipt of an amount treated as excess remuneration under § 53.4960–4(a)(1) is not a payment that is contingent on a separation from employment (and thus is not a parachute payment), even if the amount is paid to the employee because of the separation from employment.

(5) *Window programs.* A payment under a window program is contingent on a separation from employment. A *window program* is a program established by an employer in connection with an impending separation from employment to provide separation pay if the program is made available by the employer for a limited period of time (no longer than 12 months) to employees who separate from employment during that period or to employees who separate from service during that period under specified circumstances. A payment made under a window program is treated as a payment that is contingent on an employee's separation from employment notwithstanding that the employee may not have had an involuntary separation from employment.

(6) *Anti-abuse provision.* Notwithstanding paragraphs (d)(1) through (5) of this section, if the facts and circumstances demonstrate that either the vesting or the payment of an amount (whether before or after an employee's involuntary separation from employment) would not have occurred but for the involuntary nature of the separation from employment, the payment of the amount is contingent on a separation from employment. For example, an employer's exercise of discretion to accelerate vesting of an amount shortly before an involuntary separation from employment may indicate that the acceleration of vesting was due to the involuntary nature of the separation from employment and was therefore contingent on the employee's separation from employment. Similarly, payment of an amount in excess of an amount otherwise payable (for example, increased salary), shortly before or after an involuntary separation from employment, may indicate that the amount was paid because the separation was involuntary and was therefore contingent on the employee's separation from employment. If an ATEO becomes a predecessor as a result of a reorganization or other transaction described in § 53.4960–1(h), any payment to an employee by a successor organization that is contingent on the employee's separation from employment with the predecessor ATEO is treated as paid by the predecessor ATEO.

(e) *Involuntary separation from employment*—(1) *In general. Involuntary separation from employment* means a separation from employment due to the independent exercise of the employer's unilateral authority to terminate the employee's services, other than due to the employee's implicit or explicit request, if the employee was willing and able to continue performing services as an employee. An involuntary separation from employment may include an employer's failure to renew a contract at the time the contract expires, provided that the employee was willing and able to execute a new contract providing terms and conditions substantially similar to those in the expiring contract and to continue providing services. The determination of whether a separation from employment is involuntary is based on all the facts and circumstances.

(2) *Separation from employment for good reason*—(i) *In general.* Notwithstanding paragraph (e)(1) of this section, an employee's voluntary separation from employment is treated as an involuntary separation from employment if the separation occurs under certain bona fide conditions (referred to herein as a separation from employment for good reason).

(ii) *Material negative change required.* A separation from employment for good reason is treated as an involuntary separation from employment if the relevant facts and circumstances demonstrate that it was the result of unilateral employer action that caused a material negative change to the employee's relationship with the employer. Factors that may provide evidence of such a material negative change include a material reduction in the duties to be performed, a material negative change in the conditions under which the duties are to be performed, or a material reduction in the compensation to be received for performing such services.

(iii) *Deemed material negative change.* An involuntary separation from employment due to a material negative change is deemed to occur if the separation from employment occurs within two years following the initial existence of one or more of the following conditions arising without the consent of the employee:

(A) *Material diminution of compensation.* A material diminution in the employee's base compensation;

(B) *Material diminution of responsibility.* A material diminution in the employee's authority, duties, or responsibilities;

(C) *Material diminution of authority of supervisor.* A material diminution in the authority, duties, or responsibilities of the supervisor to whom the employee is required to report, including a requirement that an employee report to a corporate officer or employee instead of reporting directly to the board of directors (or similar governing body) of an organization;

(D) *Material diminution of budget.* A material diminution in the budget over which the employee retains authority;

(E) *Material change of location.* A material change in the geographic location at which the employee must perform services; or

(F) *Other material breach.* Any other action or inaction that constitutes a material breach by the employer of the agreement under which the employee provides services.

(3) *Separation from employment.* Except as otherwise provided in this paragraph, separation from employment has the same meaning as separation from service as defined in § 1.409A–1(h). Pursuant to § 1.409A–1(h), an employee generally separates from employment with the employer if the employee dies, retires, or otherwise has a termination of employment with the employer or experiences a sufficient reduction in the level of services provided to the employer. For purposes of applying the rules regarding reductions in the level of services set forth in the definition of termination of employment in § 1.409A–1(h)(1)(ii), the rules are modified for purposes of this paragraph such that an employer may not set the level of the anticipated reduction in future services that will give rise to a separation from employment, meaning that the default percentages set forth in § 1.409A–1(h)(1)(ii) apply in all circumstances. Thus, an anticipated reduction of the level of service of less than 50 percent is not treated as a separation from employment, an anticipated reduction of more than 80 percent is treated as a separation from employment, and the treatment of an anticipated reduction between those two levels is determined based on the facts and circumstances. The measurement of the anticipated reduction of the level of service is based on the average level of service for the prior 36 months (or shorter period for an employee employed for less than 36 months). In addition, an employee's separation from employment is determined without regard to § 1.409A–1(h)(2) and (5) (application to independent contractors), since, for purposes of this section, only an

employee may have a separation from employment, and a change from bona fide employee status to bona fide independent contractor status is also a separation from employment. See § 53.4960–2(a)(1) regarding the treatment of an employee who also serves as a director of a corporation (or in a substantially similar position). The definition of separation from employment also incorporates the rules under § 1.409A–1(h)(1)(i) (addressing leaves of absence, including military leaves of absence), § 1.409A–1(h)(4) (addressing asset purchase transactions), and § 1.409A–1(h)(6) (addressing employees participating in collectively bargained plans covering multiple employers). The definition further incorporates the rules of § 1.409A–1(h)(3), under which an employee separates from employment only if the employee has a separation from employment with the employer and all employers that would be considered a single employer under sections 414(b) and (c), except that the ''at least 80 percent'' rule under sections 414(b) and (c) is used, rather than replacing it with ''at least 50 percent.'' However, for purposes of determining whether there has been a separation from employment, a purported ongoing employment relationship between a covered employee and an ATEO or a related organization is disregarded if the facts and circumstances demonstrate that the purported employment relationship is not bona fide, or the primary purpose of the establishment or continuation of the relationship is avoidance of the application of section 4960.

(f) *Accelerated payment or accelerated vesting resulting from an involuntary separation from employment*—(1) *In general.* If a payment or the lapse of a substantial risk of forfeiture is accelerated as a result of an involuntary separation from employment, generally only the value due to the acceleration of payment or vesting is treated as contingent on a separation from employment, as described in paragraphs (f)(3) and (4) of this section, except as otherwise provided in this paragraph (f). For purposes of this paragraph (f), the terms *vested* and *substantial risk of forfeiture* have the same meaning as provided in § 53.4960–2(c)(2).

(2) *Nonvested payments subject to a non-service vesting condition.* If (without regard to a separation from employment) vesting of a payment would depend on an event other than the performance of services, such as the attainment of a performance goal, and that vesting event does not occur prior to the employee's separation from employment and the payment vests due to the employee's involuntary separation from employment, the full amount of the payment is treated as contingent on the separation from employment.

(3) *Vested payments.* If an involuntary separation from employment accelerates actual or constructive payment of an amount that previously vested without regard to the separation, the portion of the payment, if any, that is contingent on the separation from employment is the amount by which the present value of the accelerated payment exceeds the present value of the payment absent the acceleration. The payment of an amount otherwise due upon a separation from employment (whether voluntary or involuntary) is not treated as an acceleration of the payment unless the payment timing was accelerated due to the involuntary nature of the separation from employment. If the value of the payment absent the acceleration is not reasonably ascertainable, and the acceleration of the payment does not significantly increase the present value of the payment absent the acceleration, the present value of the payment absent the acceleration is the amount of the accelerated payment (so the amount contingent on the separation from employment is zero). If the present value of the payment absent the acceleration is not reasonably ascertainable but the acceleration significantly increases the present value of the payment, the future value of the payment contingent on the separation from employment is treated as equal to the amount of the accelerated payment. For purposes of this paragraph (f)(3), the acceleration of a payment by 90 days or less is not treated as significantly increasing the present value of the payment. For rules on determining present value, see paragraph (f)(6) and paragraphs (h), (i) and (j) of this section.

(4) *Nonvested payments subject to a service vesting condition*—(i) *In general.* If an involuntary separation from employment accelerates vesting of a payment, the portion of the payment that is contingent on separation from employment is the amount described in paragraph (f)(3) of this section (if any) plus the value of the lapse of the obligation to continue to perform services described in paragraph (f)(4)(ii) of this section (but the amount cannot exceed the amount of the accelerated payment, or, if the payment is not accelerated, the present value of the payment), to the extent that all of the following conditions are satisfied with respect to the payment:

(A) *Vesting trigger.* The payment vests as a result of an involuntary separation from employment;

(B) *Vesting condition.* Disregarding the involuntary separation from employment, the vesting of the payment was contingent only on the continued performance of services for the employer for a specified period of time; and

(C) *Services condition.* The payment is attributable, at least in part, to the performance of services before the date the payment is made or becomes certain to be made.

(ii) *Value of the lapse of the obligation to continue to perform services.* The value of the lapse of the obligation to continue to perform services is one percent of the amount of the accelerated payment multiplied by the number of full months between the date that the employee's right to receive the payment is vested and the date that, absent the acceleration, the payment would have been vested. This paragraph (f)(4)(ii) applies to the accelerated vesting of a payment in the nature of compensation even if the time when the payment is made is not accelerated. In that case, the value of the lapse of the obligation to continue to perform services is one percent of the present value of the future payment multiplied by the number of full months between the date that the individual's right to receive the payment is vested and the date that, absent the acceleration, the payment would have been vested.

(iii) *Accelerated vesting of equity compensation.* For purposes of this paragraph (f)(4), the acceleration of the vesting of a stock option or stock appreciation right (or similar arrangement) or the lapse of a restriction on restricted stock or a restricted stock unit (or a similar arrangement) is considered to significantly increase the value of the payment.

(5) *Application to benefits under a nonqualified deferred compensation plan.* In the case of a payment of benefits under a nonqualified deferred compensation plan, paragraph (f)(3) of this section applies to the extent benefits under the plan are vested without regard to the involuntary separation from employment, but the payment of benefits is accelerated due to the involuntary separation from employment. Paragraph (f)(4) of this section applies to the extent benefits under the plan are subject to the conditions described in paragraph (f)(4)(i) of this section. For any other payment of benefits under a nonqualified deferred compensation plan (such as a contribution made due to the employee's involuntary

separation from employment), the full amount of the payment is contingent on the employee's separation from employment.

(6) *Present value.* For purposes of this paragraph (f), the present value of a payment is determined based on the payment date absent the acceleration and the date on which the accelerated payment is scheduled to be made. The amount that is treated as contingent on the separation from employment is the amount by which the present value of the accelerated payment exceeds the present value of the payment absent the acceleration.

(7) *Examples.* See § 1.280G Q/A–24(f) for examples that may be applied by analogy to illustrate the rules of this paragraph (f).

(g) *Three-times-base-amount test for parachute payments*—(1) *In general.* To determine whether payments in the nature of compensation made to a covered employee that are contingent on the covered employee separating from employment with the ATEO are parachute payments, the aggregate present value of the payments must be compared to the individual's base amount. To do this, the aggregate present value of all payments in the nature of compensation that are made or to be made to (or for the benefit of) the same covered employee by an ATEO (or any predecessor of the ATEO) or related organization and that are contingent on the separation from employment must be determined. If this aggregate present value equals or exceeds the amount equal to 3-times the individual's base amount, the payments are parachute payments. If this aggregate present value is less than the amount equal to 3-times the individual's base amount, the payments are not parachute payments. See paragraphs (f)(6), (h), (i), and (j) of this section for rules on determining present value.

(2) *Examples.* The following examples illustrate the rules of this paragraph (g). For purposes of these examples, assume any entity referred to as ''ATEO'' is an ATEO.

(i) *Example 1 (Parachute payment)*—(A) *Facts.* Employee A is a covered employee and an HCE of ATEO 1. Employee A's base amount is $200,000. Payments in the nature of compensation that are contingent on a separation from employment with ATEO 1 totaling $800,000 are made to Employee A on the date of Employee A's separation from employment.

(B) *Conclusion.* The payments are parachute payments because they have an aggregate present value at the time of the separation from employment of $800,000, which is at least equal to 3-times Employee A's base amount of $200,000 (3 × $200,000 = $600,000).

(ii) *Example 2 (No parachute payment)*—(A) *Facts.* Assume the same facts as in paragraph (g)(2)(i) of this section (Example 1), except that the payments contingent on Employee A's separation from employment total $580,000.

(B) *Conclusion.* Because the aggregate present value of the payments ($580,000) is not at least equal to 3-times Employee A's base amount ($600,000), the payments are not parachute payments.

(h) *Calculating present value*—(1) *In general.* Except as otherwise provided in this paragraph (h), for purposes of determining if a payment contingent on a separation from employment exceeds 3-times the base amount, the present value of a payment is determined as of the date of the separation from employment or, if the payment is made prior to that date, the date on which the payment is made.

(2) *Deferred payments.* For purposes of determining whether a payment is a parachute payment, if a payment in the nature of compensation is the right to receive payments in a year (or years) subsequent to the year of the separation from employment, the value of the payment is the present value of the payment (or payments) calculated on the basis of reasonable actuarial assumptions and using the applicable discount rate for the present value calculation that is determined in accordance with paragraph (i) of this section.

(3) *Health care.* If the payment in the nature of compensation is an obligation to provide health care (including an obligation to purchase or provide health insurance), then, for purposes of this paragraph (h) and for applying the 3-times-base-amount test under paragraph (g) of this section, the present value of the obligation is calculated in accordance with generally accepted accounting principles. For purposes of paragraph (g) of this section and this paragraph (h), the obligation to provide health care is permitted to be measured by projecting the cost of premiums for health care insurance, even if no health care insurance is actually purchased. If the obligation to provide health care is made in coordination with a health care plan that the employer makes available to a group, then the premiums used for purposes of this paragraph (h)(3) may be the allocable portion of group premiums.

(i) *Discount rate.* Present value generally is determined by using a discount rate equal to 120 percent of the applicable Federal rate (determined under section 1274(d) and the regulations in part 1 under section 1274(d)), compounded semiannually. The applicable Federal rate to be used is the Federal rate that is in effect on the date as of which the present value is determined, using the period until the payment is expected to be made as the term of the debt instrument under section 1274(d). See paragraph (h) of this section for rules with respect to the date as of which the present value is determined. However, for any payment, the employer and the covered employee may elect to use the applicable Federal rate that is in effect on the date on which the parties entered into the contract that provides for the payment if that election is set forth in writing in the contract.

(j) *Present value of a payment to be made in the future that is contingent on an uncertain future event or condition*—(1) *Treatment based on the estimated probability of payment.* In certain cases, it may be necessary to apply the 3-times-base-amount test to a payment that is contingent on separation from employment at a time when the aggregate present value of all the payments is uncertain because the time, amount, or right to receive one or more of the payments is also contingent on the occurrence of an uncertain future event or condition. In that case, the employer must reasonably estimate whether it will make the payment. If the employer reasonably estimates there is a 50-percent or greater probability that it will make the payment, the full amount of the payment is considered for purposes of the 3-times-base-amount test and the allocation of the base amount. If the employer reasonably estimates there is a less than 50-percent probability that the payment will be made, the payment is not considered for either purpose.

(2) *Correction of incorrect estimates.* If an ATEO later determines that an estimate it made under paragraph (j)(1) of this section was incorrect, it must reapply the 3-times-base-amount test to reflect the actual time and amount of the payment. In reapplying the 3-times-base-amount test (and, if necessary, reallocating the base amount), the ATEO must determine the aggregate present value of payments paid or to be paid as of the date described in paragraph (h) of this section using the discount rate described in paragraph (i) of this section. This redetermination may affect the amount of any excess parachute payment for a prior taxable year. However, if, based on the application of the 3-times-base-amount test without regard to the payment described in this paragraph (j), an ATEO has determined it will pay an employee an excess parachute payment or payments, then the 3-times-base-amount test does not have to be reapplied when a payment

described in this paragraph (j) is made (or becomes certain to be made) if no base amount is allocated to that payment under § 53.4960–4(d)(6).

(3) *Initial option value estimate.* To the extent provided in published guidance of general applicability under § 601.601(d)(2), an initial estimate of the value of an option subject to paragraph (c) of this section is permitted to be made, with the valuation subsequently redetermined and the 3-times-base-amount test reapplied. Until guidance is published under section 4960, published guidance of general applicability described in § 601.601(d)(2) that is issued under section 280G applies by analogy.

(4) *Examples.* See § 1.280G–1, Q/A–33(d) for examples that may be applied by analogy to illustrate the rules of this paragraph (j).

(k) *Base amount*—(1) *In general.* A covered employee's base amount is the average annual compensation for services performed as an employee of the ATEO (including compensation for services performed for a predecessor of the ATEO), and/or, if applicable, a related organization, with respect to which there has been a separation from employment, if the compensation was includible in the gross income of the individual for taxable years in the base period (including amounts that were excluded under section 911) or that would have been includible in the individual's gross income if the individual had been a United States citizen or resident. See paragraph (l) of this section for the definition of base period and for examples of base amount computations.

(2) *Short or incomplete taxable years.* If the base period of a covered employee includes a short taxable year or less than all of a taxable year of the employee, compensation for the short or incomplete taxable year must be annualized before determining the average annual compensation for the base period. In annualizing compensation, the frequency with which payments are expected to be made over an annual period must be taken into account. Thus, any amount of compensation for a short or incomplete taxable year that represents a payment that will not be made more often than once per year is not annualized.

(3) *Excludable fringe benefits.* Because the base amount includes only compensation that is includible in gross income, the base amount does not include certain items that may constitute parachute payments. For example, payments in the form of excludible fringe benefits or excludible health care benefits are not included in the base amount but may be treated as parachute payments.

(4) *Section 83(b) income.* The base amount includes the amount of compensation included in income under section 83(b) during the base period.

(l) *Base period*—(1) *In general.* The base period of a covered employee is the covered employee's five most recent taxable years ending before the date on which the separation from employment occurs. However, if the covered employee was not an employee of the ATEO for this entire five-year period, the individual's base period is the portion of the five-year period during which the covered employee performed services for the ATEO, a predecessor, or a related organization.

(2) *Determination of base amount if employee separates from employment in the year hired.* If a covered employee commences services as an employee and experiences a separation from employment in the same taxable year, the covered employee's base amount is the annualized compensation for services performed for the ATEO (or a predecessor or related organization) that was not contingent on the separation from employment and either was includible in the employee's gross income for that portion of the employee's taxable year prior to the employee's separation from employment (including amounts that were excluded under section 911) or would have been includible in the employee's gross income if the employee had been a United States citizen or resident.

(3) *Examples.* The following examples illustrate the rules of paragraph (k) of this section and this paragraph (l). For purposes of these examples, assume any entity referred to as ''ATEO'' is an ATEO, any entity referred to as ''CORP'' is not an ATEO, and all employees are HCEs of their respective employers.

(i) *Example 1 (Calculation with salary deferrals)*—(A) *Facts.* Employee A, a covered employee of ATEO 1, receives an annual salary of $500,000 per year during the five-year base period. Employee A defers $100,000 of salary each year under a nonqualified deferred compensation plan (none of which is includible in Employee A's income until paid in cash to Employee A).

(B) *Conclusion.* Employee A's base amount is $400,000 (($400,000 × 5) / 5).

(ii) *Example 2 (Calculation for less-than-five-year base period)*—(A) *Facts.* Employee B, a covered employee of ATEO 1, was employed by ATEO 1 for two years and four months preceding the year in which Employee B separates from employment. Employee B's compensation includible in gross income was $100,000 for the four-month period, $420,000 for the first full year, and $450,000 for the second full year.

(B) *Conclusion.* Employee B's base amount is $390,000 (((3 × $100,000) + $420,000 + $450,000) / 3). Any compensation Employee B receives in the year of separation from employment is not included in the base amount calculation.

(iii) *Example 3 (Calculation for less-than-five-year base period with signing bonus)*—(A) *Facts.* Assume the same facts as in paragraph (l)(3)(ii)(A) of this section (Example 2), except that Employee B also received a $60,000 signing bonus when Employee B's employment with ATEO 1 commenced at the beginning of the four-month period.

(B) *Conclusion.* Employee B's base amount is $410,000 ((($60,000 + (3 × $100,000)) + $420,000 + $450,000) / 3). Pursuant to paragraph (k)(2) of this section, because the bonus is a payment that will not be paid more often than once per year, the bonus is not taken into account in annualizing Employee B's compensation for the four-month period.

(iv) *Example 4 (Effect of non-employee compensation)*—(A) *Facts.* Employee C, a covered employee of ATEO 1, was not an employee of ATEO 1 for the full five-year base period. In 2024 and 2025, Employee C is only a director of ATEO 1 and receives $30,000 per year for services as a director. On January 1, 2026, Employee C becomes an officer and covered employee of ATEO 1. Employee C's includible compensation for services as an officer of ATEO 1 is $250,000 for each of 2026 and 2027, and $300,000 for 2028. In 2028, Employee C separates from employment with ATEO 1.

(B) *Conclusion.* Employee C's base amount is $250,000 ((2 × $250,000) / 2). The $30,000 received in each of 2024 and 2025 is not included in Employee C's base amount calculation because it was not for services performed as an employee of ATEO 1.

**§ 53.4960–4 Liability for tax on excess remuneration and excess parachute payments.**

(a) *Liability, reporting, and payment of excise taxes*—(1) *Liability.* For each taxable year, with respect to each covered employee, the taxpayer is liable for tax at the rate imposed under section 11 on the sum of the excess remuneration allocated to the taxpayer under paragraph (c) of this section with respect to any applicable year ending with or within the taxable year and, if the taxpayer is an ATEO, any excess parachute payment paid by the taxpayer or a predecessor during the taxable year.

(2) *Reporting and payment.* Taxes imposed under paragraph (a)(1) of this section are reported and paid in the form and manner prescribed by the Commissioner.

(3) *Arrangements between an ATEO and a related organization.* Calculation of, and liability for, the excise tax based on excess remuneration or an excess parachute payment in accordance with paragraph (a) of this section is separate from, and unaffected by, any

arrangement that an ATEO and any related organization may have for bearing the cost of any excise tax liability under section 4960.

(b) *Amounts subject to tax*—(1) *Excess remuneration*—(i) *In general. Excess remuneration* means the amount of remuneration paid by an ATEO to any covered employee during an applicable year in excess of $1 million, as determined under § 53.4960–2.

(ii) *Exclusion for excess parachute payments.* Excess remuneration does not include any amount that is an excess parachute payment as defined in paragraph (b)(2) of this section.

(2) *Excess parachute payment. Excess parachute payment* means an amount equal to the excess (if any) of the amount of any parachute payment paid by an ATEO, a predecessor of the ATEO, or a related organization, or on behalf of an any such person, during the taxable year over the portion of the base amount allocated to such payment.

(c) *Calculation of liability for tax on excess remuneration*—(1) *In general.* If, for the taxable year, remuneration paid during an applicable year by more than one employer to a covered employee is taken into account in determining the tax imposed on excess remuneration for such taxable year, then the taxpayer is liable for the tax in an amount which bears the same ratio to the total tax determined under section 4960(a) as the amount of remuneration paid by the taxpayer (as an employer) to the covered employee (including remuneration deemed paid by the employer under § 53.4960–2(b)(1), but disregarding remuneration treated as paid by the employer under § 53.4960–2(b)(2)), bears to the total amount of remuneration paid by the ATEO under § 53.4960–2 (including remuneration treated as paid by the ATEO under § 53.4960–2(b)(2)). This process is repeated for each ATEO of which the employee is a covered employee, notwithstanding paragraph (c)(2) of this section.

(2) *Calculation of the tax for overlapping groups of related organizations*—(i) *In general.* If, with respect to a covered employee, a taxpayer is liable for the excise tax on excess remuneration in its capacity both as an ATEO and as a related organization, or as an organization that is related to more than one ATEO, then, with respect to the covered employee, the taxpayer is liable for the excise tax only in the capacity in which it is liable for the greatest amount of excise tax for the taxable year, whether as an ATEO or as a related organization. For example, assume ATEO 1 is a related organization to both ATEO 2 and ATEO 3 and pays excess remuneration to Employee D, and Employee D is a covered employee of ATEO 1, ATEO 2, and ATEO 3. In this case, ATEO 1's liability for excise tax on excess remuneration to Employee D is the highest of its liability as an ATEO, as a related organization to ATEO 2, or as a related organization to ATEO 3.

(ii) *Calculation when an ATEO has a short applicable year.* If an ATEO has a short applicable year under § 53.4960–1(c)(3), then a related organization must determine the capacity in which it is liable for the greatest amount of excise tax for the taxable year under paragraph (c)(2)(i) of this section by comparing its liability for the short applicable year with its liability for any other related ATEO's applicable year (and, if the related organization is also an ATEO, its own applicable year) beginning or ending on the same date as the short applicable year, as appropriate.

(3) *Examples.* The following examples illustrate the rules of this paragraph (c). For purposes of these examples, assume that the rate of excise tax under section 4960 is 21 percent, that any entity that is referred to as ''ATEO'' is an ATEO, that any entity referred to as ''CORP'' is not an ATEO and is not a publicly held corporation or a covered health insurance provider within the meaning of section 162(m)(2) or (m)(6)(C) respectively, and that no parachute payments are made in any of the years at issue.

(i) *Example 1 (Remuneration from multiple employers)*—(A) *Facts.* ATEO 1 and CORP 1 are related organizations. Employee A is a covered employee of ATEO 1 and an employee of CORP 1. In the 2021 applicable year, ATEO 1 pays Employee A $1.2 million of remuneration, and CORP 1 pays A $800,000 of remuneration.

(B) *Conclusion.* For the 2021 applicable year, ATEO 1 is treated as paying Employee A $2 million of remuneration, $1 million of which is excess remuneration. The total excise tax is $210,000 (21 percent × $1 million). ATEO 1 paid ⅗ of Employee A's total remuneration ($1.2 million / $2 million); thus, ATEO 1 is liable for ⅗ of the excise tax, which is $126,000. CORP 1 paid ⅖ of Employee A's total remuneration ($800,000 / $2 million); thus, CORP 1 is liable for ⅖ of the excise tax, which is $84,000.

(ii) *Example 2 (Multiple liabilities for same applicable year due to overlapping related organization groups)*—(A) *Facts.* The following facts are all with respect to the 2021 applicable year: ATEO 5 owns 60 percent of the stock of CORP 2. Sixty percent of ATEO 4's directors are representatives of ATEO 3. In addition, 60 percent of ATEO 5's directors are representatives of ATEO 4, but none are representatives of ATEO 3. Employee B is a covered employee of ATEO 3, ATEO 4, and ATEO 5 and is an employee of CORP 2. ATEO 3, ATEO 4, ATEO 5, and CORP 2 each pay Employee B $1.2 million of remuneration in the applicable year. ATEO 4's related organizations are ATEO 3 and ATEO 5. ATEO 3's only related organization is ATEO 4. ATEO 5's related organizations are ATEO 4 and CORP 2.

(B) *Calculation (ATEO 3).* Under ATEO 3's calculation as an ATEO, ATEO 3 is treated as paying Employee B a total of $2.4 million in remuneration ($1.2 million from ATEO 3 + $1.2 million from ATEO 4). The total excise tax is $294,000 (21 percent × $1.4 million). ATEO 3 and ATEO 4 each paid ½ of Employee B's total remuneration ($1.2 million / $2.4 million); thus, under ATEO 3's calculation, ATEO 3 and ATEO 4 each would be liable for ½ of the excise tax, which is $147,000.

(C) *Calculation (ATEO 4).* Under ATEO 4's calculation as an ATEO, ATEO 4 is treated as paying Employee B a total of $3.6 million in remuneration for the 2021 applicable year ($1.2 million from ATEO 3 + $1.2 million from ATEO 4 + $1.2 million from ATEO 5). The total excise tax is $546,000 (21 percent × $2.6 million). ATEO 3, ATEO 4, and ATEO 5 each paid ⅓ of the total remuneration to Employee B ($1.2 million / $3.6 million); thus, under ATEO 4's calculation, ATEO 3, ATEO 4, and ATEO 5 each would be liable for ⅓ of the excise tax, which is $182,000.

(D) *Calculation (ATEO 5).* Under ATEO 5's calculation as an ATEO, ATEO 5 is treated as paying Employee B a total of $3.6 million in remuneration ($1.2 million from ATEO 4 + $1.2 million from ATEO 5 + $1.2 million from CORP 2). The total excise tax is $546,000 (21 percent × $2.6 million). ATEO 4, ATEO 5, and CORP 2 each paid ⅓ of the total remuneration to Employee B ($1.2 million / $3.6 million); thus, under ATEO 5's calculation, ATEO 4, ATEO 5, and CORP 2 each would be liable for ⅓ of the excise tax, which is $182,000.

(E) *Conclusion (Liability of ATEO 3).* ATEO 3 is liable for $182,000 of excise tax as a related organization under ATEO 4's calculation, which is greater than the $147,000 of excise tax ATEO 3 calculated under ATEO 3's own calculation. Thus, ATEO 3's excise tax liability is $182,000.

(F) *Conclusion (Liability of ATEO 4).* ATEO 4 is liable as a related organization for $147,000 of excise tax according to ATEO 3's calculation, for $182,000 according to ATEO 4's own calculation, and for $182,000 according to ATEO 5's calculation. Thus, ATEO 4's excise tax liability is $182,000.

(G) *Conclusion (Liability of ATEO 5).* ATEO 5 is liable as a related organization for $182,000 of excise tax under ATEO 4's calculation and is liable for $182,000 of excise tax under ATEO 5's own calculation. Thus, ATEO 5's excise tax liability is $182,000.

(H) *Conclusion (Liability of CORP 2).* CORP 2 is liable as a related organization for $182,000 of excise tax according to ATEO 5's calculation. Thus, CORP 2's excise tax liability is $182,000.

(iii) *Example 3 (Liabilities for a short applicable year resulting from a termination of ATEO status)*—(A) *Facts.* ATEO 6 and CORP 3 are related organizations that use a calendar year taxable year. Employee C is a covered employee of ATEO 6 and an

employee of CORP 3. ATEO 6 has a termination of ATEO status on June 30, 2022. From January 1 through June 30, 2022, ATEO 6 paid Employee C $1 million of remuneration and CORP 3 paid Employee C $1 million of remuneration. From July 1 through December 31, 2022, ATEO 6 paid Employee C no remuneration and CORP 3 paid Employee C $1 million of remuneration.

(B) *Conclusion (ATEO 6).* For ATEO 6's taxable year starting January 1, 2022, and ending June 30, 2022, ATEO 6 is treated as paying $2 million of remuneration to Employee C ($1 million from ATEO 6 + $1 million from CORP 3), $1 million of which is excess remuneration. ATEO 6 is thus liable for ½ of the excise tax, which is $105,000 ($500,000 × 21 percent).

(C) *Conclusion (CORP 3).* For CORP 3's taxable year starting January 1, 2022, and ending December 31, 2022, only ATEO 6's applicable year ending June 30 ends with or within the taxable year. CORP 3 is allocated liability for the tax with respect to remuneration treated as paid by ATEO 6 during its applicable year starting January 1, 2022 and ending June 30, 2022. CORP 3 is thus liable for ½ of the excise tax, which is $105,000 ($500,000 × 21 percent).

(iv) *Example 4 (Multiple liabilities where there is a short applicable year resulting from a termination of ATEO status)*—(A) *Facts.* Assume the same facts as in paragraph (c)(3)(iii) of this section (Example 3), except that ATEO 7 is also a related organization of ATEO 6 and CORP 3 and paid Employee C $1 million of remuneration between January 1, 2022, and June 30, 2022. ATEO 7 also paid Employee C $1 million of remuneration between July 1 and December 31, 2022.

(B) *Calculation (ATEO 6).* Under ATEO 6's calculation as an ATEO, ATEO 6 is treated as paying Employee C a total of $3 million in remuneration for the applicable year starting January 1, 2022, and ending June 30, 2022 ($1 million from ATEO 6 + $1 million from ATEO 7 + $1 million from CORP 3), $2 million of which is excess remuneration. The total excise tax is $420,000 (21 percent × $2 million). ATEO 6, ATEO 7, and CORP 3 each paid ⅓ of the total remuneration to Employee C ($1 million / $3 million); thus, under ATEO 6's calculation, ATEO 6, ATEO 7, and CORP 3 each would be liable for ⅓ of the excise tax, which is $140,000.

(C) *Calculation (ATEO 7).* Under ATEO 7's calculation as an ATEO, ATEO 7 is treated as paying Employee C a total of $5 million in remuneration for the applicable year starting January 1, 2022, and ending December 31, 2022 ($1 million from ATEO 6 + $2 million from ATEO 7 + $2 million from CORP 3), $4 million of which is excess remuneration. The total excise tax is $840,000 (21 percent × $4 million). ATEO 6 paid ⅕ of the total remuneration to Employee C ($1 million / $5 million), and ATEO 7 and CORP 3 each paid ⅖ of the total remuneration ($2 million / $5 million; thus, under ATEO 7's calculation, ATEO 6 would be liable for ⅕ of the excise tax, which is $168,000, and ATEO 7 and CORP 3 each would be liable for ⅖ of the excise tax, which is $336,000.

(D) *Conclusion (Liability of ATEO 6, ATEO 7, and CORP 3).* Only ATEO 6's applicable year starting January 1, 2022 and ending June 30, 2022, ended with or within ATEO 6's taxable year starting January 1, 2022, and ending June 30, 2022; thus, ATEO 6 is liable for $140,000 of excise tax under ATEO 6's own calculation.

(E) *Conclusion (Liability of ATEO 7).* ATEO 7 is liable as a related organization for $140,000 of excise tax according to ATEO 6's calculation for the applicable year ending June 30, 2022, but is liable for $336,000 according to ATEO 7's own calculation for the applicable year ending December 31, 2022. Thus, ATEO 7's excise tax liability is $336,000.

(F) *Conclusion (Liability of CORP 3).* CORP 3 is liable as a related organization for $140,000 of excise tax according to ATEO 6's calculation for the applicable year ending June 30, 2022, but is liable for $336,000 according to ATEO 7's calculation for the applicable year ending December 31, 2022. Thus, CORP 3's excise tax liability is $336,000.

(v) *Example 5 (Liability when there are multiple applicable years for a taxable year)*—(A) *Facts.* Assume the same facts as in paragraph (c)(3)(iii) of this section (Example 3), except that ATEO 6, and CORP 3 each use a taxable year that starts on October 1 and ends on September 30. In 2021, ATEO 6 paid C $2 million and CORP 3 paid Employee C $2 million.

(B) *Conclusion (ATEO 6).* For ATEO 6's taxable year starting October 1, 2021, and ending June 30, 2022 (the date of termination of ATEO status), two applicable years end with or within the taxable year. Thus, ATEO 6 must determine the amount of remuneration that it is treated as paying for each separate applicable year. For the 2021 applicable year (full year), ATEO 6 is treated as paying $4 million of remuneration to Employee C ($2 million from ATEO 6 + $2 million from CORP 3), $3 million of which is excess remuneration. ATEO 6 is thus liable for $315,000, which is ½ of the overall excise tax ($3 million excess remuneration × 21 percent = $630,000 × ½). For the 2022 applicable year (January 1 through June 30), ATEO 6 is treated as paying $2 million of remuneration to Employee C ($1 million from ATEO 6 + $1 million from CORP 3), $1 million of which is excess remuneration. ATEO 6 is thus liable for $105,000, which is ½ of the overall excise tax ($1 million excess remuneration × 21 percent = $210,000 × ½). Accordingly, ATEO 6 is liable for $420,000 total excise tax for the taxable year starting October 1, 2021, and ending June 30, 2022

(C) *Conclusion (CORP 3).* For CORP 3's taxable year starting October 1, 2021, and ending September 30, 2022, both of ATEO 6's most recent applicable years end with or within its taxable year. CORP 3 is allocated liability for the tax with regard to remuneration treated as paid by ATEO 6 during both applicable years. CORP 3 is thus liable for ½ of the excise tax for the 2021 applicable year, which is $315,000 ($3 million × 21 percent = $630,000 × ½), and ½ of the excise tax for the 2022 applicable year, which is $105,000 ($1 million × 21 percent = $210,000 × ½).

(d) *Calculation of liability for excess parachute payments*—(1) *In general.* Except as provided in paragraph (d)(4) of this section, only excess parachute payments made by or on behalf of an ATEO are subject to tax under this section. However, parachute payments made by related organizations that are not made by or on behalf of an ATEO are taken into account for purposes of determining the total amount of excess parachute payments.

(2) *Computation of excess parachute payments*—(i) *Calculation.* The amount of an excess parachute payment is the excess of the amount of any parachute payment made by an ATEO, a predecessor of the ATEO, or a related organization, or on behalf of any such person, over the portion of the covered employee's base amount that is allocated to the payment. The portion of the base amount allocated to any parachute payment is the amount that bears the same ratio to the base amount as the present value of the parachute payment bears to the aggregate present value of all parachute payments made or to be made to (or for the benefit of) the same covered employee. Thus, the portion of the base amount allocated to any parachute payment is determined by multiplying the base amount by a fraction, the numerator of which is the present value of the parachute payment and the denominator of which is the aggregate present value of all parachute payments.

(3) *Examples.* The following examples illustrate the rules of this paragraph (d)(2). For purposes of these examples, assume any entity referred to as ''ATEO'' is an ATEO and all employees are HCEs of their respective employers.

(i) *Example 1 (Compensation from related organizations)*—(A) *Facts.* ATEO 1 and ATEO 2 are related organizations. Employee A is a covered employee of ATEO 1 and an employee of ATEO 2 who has an involuntary separation from employment with ATEO 1 and ATEO 2. Employee A's base amount is $200,000 with respect to ATEO 1 and $400,000 with respect to ATEO 2. A receives $1 million from ATEO 1 contingent upon Employee A's involuntary separation from employment from ATEO 1 and $1 million contingent upon Employee A's involuntary separation from employment from ATEO 2.

(B) *Conclusion.* Employee A has a base amount of $600,000 ($200,000 + $400,000). The two $1 million payments are parachute payments because their aggregate present value is at least 3-times Employee A's base amount (3 × $600,000 = $1.8 million). The portion of the base amount allocated to each parachute payment is $300,000 (($1 million / $2 million) × $600,000). Thus, the amount of each excess parachute payment is $700,000 ($1 million − $300,000).

(ii) *Example 2 (Multiple parachute payments)*—(A) *Facts.* Employee B is a covered employee of ATEO 3 with a base amount of $200,000 who is entitled to receive

two parachute payments: One of $200,000 and the other of $900,000. The $200,000 payment is made upon separation from employment, and the $900,000 payment is to be made on a date in a future taxable year. The present value of the $900,000 payment is $800,000 as of the date of the separation from employment.

(B) *Conclusion.* The portion of the base amount allocated to the first payment is $40,000 (($200,000 present value of the parachute payment / $1 million present value of all parachute payments) × $200,000 total base amount) and the portion of the base amount allocated to the second payment is $160,000 (($800,000 present value of the parachute payment / $1 million present value of all parachute payments) × $200,000 total base amount), respectively. Thus, the amount of the first excess parachute payment is $160,000 ($200,000 − $40,000) and that the amount of the second excess parachute payment is $740,000 ($900,000 − $160,000).

(4) *Reallocation when the payment is disproportionate to base amount.* In accordance with section 4960(d), the Commissioner may treat a parachute payment as paid by an ATEO if the facts and circumstances indicate that the ATEO and other payors of parachute payments structured the payments in a manner primarily to avoid liability under section 4960. For example, if an ATEO would otherwise be treated as paying a portion of an excess parachute payment in an amount that is materially lower in proportion to the total excess parachute payment than the proportion that the amount of average annual compensation paid by the ATEO (or any predecessor) during the base period bears to the total average annual compensation paid by the ATEO (or any predecessor) and any related organization (or organizations), and the lower amount is offset by payments from a non-ATEO or an unrelated ATEO, this may indicate that that the parachute payments were structured in a manner primarily to avoid liability under section 4960.

(5) *Election to prepay tax.* An ATEO may prepay the excise tax under paragraph (a)(1) of this section on any excess parachute payment for the taxable year of the separation from employment or any later taxable year before the taxable year in which the parachute payment is actually or constructively paid. However, an employer may not prepay the excise tax on a payment to be made in cash if the present value of the payment is not reasonably ascertainable under § 31.3121(v)(2)–1(e)(4) or on a payment related to health coverage. Any prepayment must be based on the present value of the excise tax that would be due for the taxable year in which the employer will pay the excess parachute payment, and be calculated using the discount rate equal to 120 percent of the applicable Federal rate (determined under section 1274(d) and the regulations in part 1 under section 1274) and the tax rate in effect under section 11 for the year in which the excise tax is paid. For purposes of projecting the future value of a payment that provides for interest to be credited at a variable interest rate, the employer may make a reasonable assumption regarding the variable rate. An employer is not required to adjust the excise tax paid merely because the actual future interest rates are not the same as the rate used for purposes of projecting the future value of the payment.

(6) *Liability after a redetermination of total parachute payments.* If an ATEO determines that an estimate made under § 53.4960–3(j)(1) was incorrect, it must reapply the 3-times-base-amount test to reflect the actual time and amount of the payment. In reapplying the 3-times-base-amount test (and, if necessary, reallocating the base amount), the ATEO must determine the correct base amount allocable to any parachute payment paid in the taxable year. See § 1.280G–1, Q/A–33(d) for examples that may be applied by analogy to illustrate the rules of this paragraph (d)(6).

(7) *Examples.* The following examples illustrate the rules of this paragraph (d). For purposes of these examples, assume any entity referred to as ''ATEO'' is an ATEO, any entity referred to as ''CORP'' is not an ATEO, and all employees are HCEs of their respective employers.

(i) *Example 1 (Excess parachute payment paid by a non-ATEO)*—(A) *Facts.* ATEO 1 and CORP 1 are related organizations that are treated as the same employer for purposes of § 53.4960–3(e)(3) (defining separation from employment) and are both calendar year taxpayers. For 2021 through 2025, ATEO 1 and CORP 1 each pay Employee A $250,000 of compensation per year for services performed as an employee of each organization ($500,000 total per year). In 2026, ATEO 1 and CORP 1 each pay Employee A a $1 million payment ($2 million total) that is contingent on Employee A's separation from employment with both ATEO 1 and CORP 1, all of which is remuneration, and no other compensation. Employee A is a covered employee of ATEO 1 in 2026.

(B) *Conclusion.* Employee A's base amount in 2026 is $500,000 (Employee A's average annual compensation from both ATEO 1 and CORP 1 for the previous five years). ATEO 1 makes a parachute payment of $2 million in 2026, the amount paid by both ATEO 1 and CORP 1 that is contingent on Employee A's separation from employment with ATEO 1 and all organizations that are treated as the same employer under § 53.4960–3(e)(3). Employee A's $2 million payment exceeds 3-times the base amount ($1.5 million). ATEO 1 makes a $1.5 million excess parachute payment (the amount by which $2 million exceeds the $500,000 base amount). However, ATEO 1 is liable for tax only on the excess parachute payment paid by ATEO 1 ($1 million parachute payment − $250,000 base amount = $750,000) that is subject to tax under § 53.4960–4(a). CORP 1 is not liable for tax under § 53.4960–4(a) in 2026.

(ii) *Example 2 (Election to prepay tax on excess parachute payments and effect on excess remuneration)*—(A) *Facts.* Employee B is a covered employee of ATEO 2 with a base amount of $200,000 who is entitled to receive two parachute payments from ATEO 2, one of $200,000 and the other of $900,000. The $200,000 payment is made upon separation from employment, and the $900,000 payment is to be made on a date in a future taxable year. The present value of the $900,000 payment is $800,000 as of the date of the separation from employment. ATEO 2 elects to prepay the excise tax on the $900,000 future parachute payment (of which $740,000 is an excess parachute payment). The tax rate under section 11 is 21 percent for the taxable year the excise tax is paid and, using a discount rate determined under § 53.4960–3(i), the present value of the $155,400 ($740,000 × 21 percent) excise tax on the $740,000 future excess parachute payment is $140,000.

(B) *Conclusion.* The excess parachute payment is thus $800,000 ($200,000 plus $800,000 present value of the $900,000 future payment, less $200,000 base amount), with $40,000 of the base amount allocable to the $200,000 payment and $160,000 of the base amount allocable to the $900,000 payment. To prepay the excise tax on the $740,000 future excess parachute payment, the employer must satisfy its $140,000 obligation under section 4960 with respect to the future payment, in addition to the $33,600 excise tax ($160,000 × 21 percent) on the $160,000 excess parachute payment made upon separation from employment. For purposes of determining the amount of excess remuneration (if any) under section 4960(a)(1), the amount of remuneration paid by the employer to the covered employee for the taxable year of the separation from employment is reduced by the $900,000 of total excess parachute payments ($160,000 + $740,000).

### § 53.4960–5 Applicability date.

(a) *General applicability date.* Sections 53.4960–0 through 53.4950–4 apply to taxable years beginning after December 31 of the [calendar year in which the Treasury decision adopting these rules as final regulations is published in the **Federal Register**].

**Sunita Lough,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2020–11859 Filed 6–5–20; 4:15 pm]

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# FEDERAL REGISTER

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Part IV

## The President

Proclamation 10049—Modifying the Northeast Canyons and Seamounts Marine National Monument

Federal Register
Vol. 85, No. 113
Thursday, June 11, 2020

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 10049 of June 5, 2020**

## Modifying the Northeast Canyons and Seamounts Marine National Monument

**By the President of the United States of America**

**A Proclamation**

In Proclamation 9496 of September 15, 2016, and exercising his authority under section 320301 of title 54, United States Code (the ''Antiquities Act''), the President established the Northeast Canyons and Seamounts Marine National Monument, reserving for the care and management of objects of historic and scientific interest approximately 4,913 square miles of water and submerged lands in and around certain deep-sea canyons and seamounts situated upon lands and interests in lands owned or controlled by the Federal Government. The President prohibited commercial fishing, with a phase-out period for American lobster and red crab fisheries, within the monument's boundaries. This proclamation lifts the prohibition on commercial fishing, an activity that is subject to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens), 16 U.S.C. 1801 *et seq.,* and other applicable laws, regulations, and requirements. This proclamation does not modify the monument in any other respect.

Proclamation 9496 identifies a number of canyons and seamounts as objects of historic and scientific interest. The monument is designated in two units, which correspond to two distinct geological features. The Canyons Unit comprises three underwater canyons that start at the edge of the continental shelf, whereas the Seamounts Unit consists of four undersea mountains. Both units are located in the United States Exclusive Economic Zone. In addition to the geological features, Proclamation 9496 designates the natural resources and ecosystems in and around the Canyons and Seamounts Units as objects of historic and scientific interest. Proclamation 9496 describes diverse ecological communities in the canyon and seamount areas, which include seabirds, whales, dolphins, turtles, and highly migratory fish species, such as tunas, billfish, and sharks. Proclamation 9496 observes that some of these species have appeared in the canyon and seamount areas in large aggregations and increased numbers. In support of the monument designation, Proclamation 9496 notes that ''[t]hese canyons and seamounts, and the ecosystem they compose, have long been of intense scientific interest,'' with ''[s]cientists from government and academic oceanographic institutions'' studying ''the canyons and seamounts using research vessels, submarines, and remotely operated underwater vehicles for important deep-sea expeditions.''

As part of the management of the monument, Proclamation 9496 prohibited, subject to the phase-out period previously noted, all commercial fishing within the monument's boundaries. As explained herein, following further consideration of the nature of the objects identified in Proclamation 9496 and the protection of those objects already provided by relevant law, I find that appropriately managed commercial fishing would not put the objects of scientific and historic interest that the monument protects at risk. Indeed, Proclamation 9496 allows for recreational fishing and further acknowledges that ''[t]hroughout New England, the maritime trades, and especially fishing, have supported a vibrant way of life, with deep cultural roots and a strong connection to the health of the ocean and the bounty it provides.''

With respect to fish in particular, many of the fish species that Proclamation 9496 identifies are highly migratory and not unique to the monument. Some of the examples of fish species that Proclamation 9496 identifies are not of such significant scientific interest that they merit additional protection beyond that already provided by other law. Moreover, the fish species described in Proclamation 9496 are subject to Federal protections under existing laws and agency management designations. For example, Magnuson-Stevens regulates commercial fishing to ensure long-term biological and economic sustainability for our Nation's marine fisheries, taking into account the protection of associated marine ecosystems. Magnuson-Stevens establishes regional fishery management councils, supervised by the Secretary of Commerce in coordination with the States and affected stakeholders, that develop fishery management plans to regulate our Nation's fisheries, using the best available science and observing strict conservation and management requirements. Magnuson-Stevens requires a similar process of science-based fisheries management for highly migratory species, including the tunas referenced in Proclamation 9496. In addition, Magnuson-Stevens provides that fishery management plans may include, among other measures, management measures to conserve target and non-target species and habitats, including measures to protect deep-sea corals.

A host of other laws enacted after the Antiquities Act provide specific protection for other plant and animal resources (including coral species) both within and outside the monument. These laws include the Endangered Species Act, 16 U.S.C. 1531 *et seq.,* the Migratory Bird Treaty Act, 16 U.S.C. 703–712, the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd–668ee, the Refuge Recreation Act, 16 U.S.C. 460k *et seq.,* the Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.,* the Clean Water Act, 33 U.S.C. 1251 *et seq.,* the Oil Pollution Act, 33 U.S.C. 2701 *et seq.,* the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.,* and Title I of the Marine Protection, Research and Sanctuaries Act (Ocean Dumping Act), 33 U.S.C. 1401 *et seq.* For example, the Endangered Species Act generally prohibits the taking of fish and wildlife species listed as endangered, and also generally ensures that Federal actions, including fisheries management, are not likely to jeopardize the existence of any such species. The Marine Mammal Protection Act provides protections for marine mammals, and prohibits their take, subject to some exceptions. Numerous other statutes, including the Clean Water Act, Oil Pollution Act, and Ocean Dumping Act, address both land-based and ocean-based sources of pollution and help ensure that water quality continues to support plankton and other pelagic organisms.

After further consideration of the nature of the objects identified in Proclamation 9496 and the protection of those objects already provided by Magnuson-Stevens and other relevant law, I find that a prohibition on commercial fishing is not, at this time, necessary for the proper care and management of the Northeast Canyons and Seamounts Marine National Monument, or the objects of historic or scientific interest therein.

WHEREAS, Proclamation 9496 of September 15, 2016, designated the Northeast Canyons and Seamounts Marine National Monument in the Atlantic Ocean and reserved approximately 4,913 square miles in the United States Exclusive Economic Zone for the care and management of objects of historic and scientific interest identified therein;

WHEREAS, I find that removing the restrictions on commercial fishing set forth in Proclamation 9496 to allow for well-regulated commercial fishing use is in the public interest and that the objects in the monument can be, and are currently, protected pursuant to carefully tailored regulation and management under existing Federal law:

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including section 320301 of title 54, United States Code, hereby proclaim that Proclamation 9496, which established

the Northeast Canyons and Seamounts Marine National Monument, is amended as follows:

(1) in the section entitled ''Prohibited Activities,'' by deleting paragraph 6; and

(2) in the section entitled ''Regulated Activities,'' by deleting paragraph 5 and by re-designating paragraphs 6 and 7 as paragraphs 5 and 6, respectively.

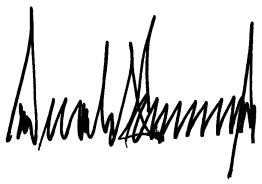
Furthermore, nothing in paragraph 4 in the section entitled ''Prohibited Activities'' in Proclamation 9496 shall be deemed to apply to commercial fishing that is carried out in accordance with Magnuson-Stevens and other applicable laws, regulations, and requirements.

Nothing in this proclamation shall be construed to revoke, modify, or affect any withdrawal, reservation, or appropriation, other than the one created by Proclamation 9496.

Nothing in this proclamation shall change the management of the areas designated and reserved by Proclamation 9496, except as explicitly provided in this proclamation.

If any provision of this proclamation, including its application to a particular parcel of land, is held to be invalid, the remainder of this proclamation and its application to other parcels of land shall not be affected thereby.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



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## LIST OF PUBLIC LAWS

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