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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 9

[Docket ID OCC–2020–0031]

RIN 1557–AE99

Collective Investment Funds: Prior Notice Period for Withdrawals

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim final rule; request for comment.

SUMMARY: OCC regulations permit a national bank or Federal Savings association (collectively, a bank) administering a collective investment fund (CIF) that is invested primarily in real estate or other assets that are not readily marketable to require a prior notice period, not to exceed one year, for withdrawals from the fund. The OCC interprets this notice provision as requiring the bank to withdraw an account within the prior notice period or, if permissible under the CIF's written plan, within one year after prior notice was required (standard withdrawal period). The OCC is issuing an interim final rule to codify the standard withdrawal period and create a limited exception that allows a bank, with OCC approval, to withdraw an account from the CIF up to one year beyond the standard withdrawal period, with opportunities for further extensions, provided that certain conditions are satisfied. The exception is intended to enable a bank to preserve the value of the CIF's assets for the benefit of fund participants during unanticipated and severe market conditions, such as those resulting from the current national health emergency concerning the coronavirus disease (COVID–19) outbreak.

DATES: The interim final rule is effective August 13, 2020. Comments on the interim final rule must be received no later than September 14, 2020.

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Collective Investment Funds: Prior Notice Period for Withdrawals'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

Federal eRulemaking Portal—''Regulations.gov Classic or Regulations.gov Beta'':

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- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2020–0031'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

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The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FOR FURTHER INFORMATION CONTACT:

Patricia Dalton, Director for Asset Management Policy, David Stankiewicz, Technical Expert for Asset Management Policy, Market Risk Policy Division,

Bank Supervision Policy, 202–649–6360; Beth Kirby, Assistant Director, Asa Chamberlayne, Counsel, or Daniel Perez, Senior Attorney, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

A collective investment fund (CIF) is a bank-managed fiduciary fund that holds pooled assets. A national bank or Federal savings association (collectively, a bank) that establishes and operates a CIF must do so in accordance with the criteria established under the OCC fiduciary activities regulation at 12 CFR 9.18.[1] A CIF is funded through contributions by the CIF's participants, which are the beneficial owners of the fund's assets. A bank admitting a CIF participant or withdrawing all or part of its participating interest (that is, allowing the participant to, in effect, redeem a proportionate interest in the assets of the CIF) must do so on the basis of a valuation of the CIF's assets.[2]

A bank administering a CIF invested primarily in real estate or other assets that are not readily marketable may require a prior notice period of up to one year for withdrawals.[3] The OCC has interpreted this notice as requiring the bank to withdraw an account within the prior notice period or, if permissible under the CIF's written plan, within one year after prior notice was required (standard withdrawal period).[4] The OCC has also recognized, however, that there may be circumstances when a longer withdrawal period is appropriate. For example, during the 2009 financial crisis, the OCC permitted a bank to extend the time period for withdrawals, subject to certain conditions.[5]

During normal market conditions, a bank can typically satisfy withdrawal requests within the standard withdrawal period. However, in the event of unanticipated and severe market conditions, a bank may be faced with an increased number of withdrawal requests and reduced market liquidity. If the bank is required to sell assets held by a CIF to satisfy withdrawals within the standard withdrawal period, it may have difficulty realizing a fair value for those assets. This could compel ''fire sales'' of CIF assets and lead to avoidable economic harm for CIF participants, which would be contrary to general fiduciary principles that require a CIF trustee to act in the interests of CIF participants. Similarly, an in-kind distribution[6] of CIF assets to CIF participants would be generally impractical and involve considerable difficulties and transaction costs for the participants, who may be ill-equipped to receive, manage, and liquidate such assets.

Extending the time period for acting upon withdrawal requests beyond the standard withdrawal period would allow a bank administering a CIF to take appropriate steps to satisfy the requests within the context of current market conditions, including allowing for an orderly liquidation of sufficient assets to raise cash through prudent and appropriate sales, as the return of more normal market conditions permit.

II. Interim Final Rule

The OCC is issuing an interim final rule that clarifies the standard withdrawal period and establishes a limited exception to that withdrawal period.

Under 12 CFR 9.18(b)(5)(iii), a bank administering a CIF invested primarily in real estate or other assets that are not readily marketable may require a prior notice period of up to one year for withdrawals. As described above, the OCC has interpreted this notice provision as requiring payment of the withdrawal requests within the standard withdrawal period. The IFR adds new paragraph (b)(5)(iii)(B) to § 9.18, which codifies the standard withdrawal period as a distinct provision of the rule and provides that a bank that requires a prior notice period for withdrawals generally must withdraw an account within the prior notice period or, if permissible under the CIF's written plan, within one year after prior notice was required.

The IFR also adds new paragraph (b)(5)(iii)(C) to § 9.18 to create an exception to the standard withdrawal period that may be invoked under exceptional circumstances. Specifically, under the exception, a bank may withdraw an account from a CIF up to one year beyond the standard withdrawal period described in new paragraph (b)(5)(iii)(B), if the OCC approves and certain conditions are met. Namely, the fund's written plan (including its notice and withdrawal policy) must authorize an extended withdrawal period and be fully disclosed to fund participants. In addition, the bank's board of directors, or a committee authorized by the board of directors, must make certain determinations and commitments. The bank's board of directors, or a committee authorized by the board of directors, must determine that (1) due to unanticipated and severe market conditions for specific assets held by the fund, an extended withdrawal period is necessary in order to preserve the value of the fund's assets for the benefit of fund participants; and (2) the extended withdrawal period is consistent with 12 CFR part 9 and applicable law. The bank's board of directors, or a committee authorized by the board of directors, must also commit that the bank will act upon any withdrawal request as soon as practicable. Finally, the rule provides discretion for the OCC to impose additional conditions if the OCC determines that the conditions are necessary or appropriate to protect the interests of fund participants.

The conditions established by this interim final rule are intended to ensure that the exception is only granted if it is consistent with fiduciary principles, applicable law, and the CIF's written plan.[7] To ensure that the exception is consistent with these principles and requirements, and as described above, the OCC may impose additional conditions, such as requiring periodic progress reports from the bank.

If, due to ongoing severe market conditions, a bank has been unable to satisfy withdrawal requests during the one-year extension period without causing harm to participants, the bank may request OCC approval under new paragraph (b)(5)(iii)(D) for up to two additional one-year extensions. The OCC may only approve each additional one-year extension if the OCC determines that the bank has made a good faith effort to satisfy withdrawal requests during the original extension period and the bank has been unable to satisfy such requests without causing harm to participants due to ongoing severe market conditions. The bank must also continue to satisfy the conditions described in new paragraph (b)(5)(iii)(C). In the OCC's experience, the initial one-year extension should be sufficient in most cases to avoid a ''fire sale'' of CIF assets during stressed market conditions. Additional extensions are available in one-year increments to allow the OCC to review

[1] Pursuant to 12 CFR 150.260, the terms ''bank'' and ''national bank'' as used in 12 CFR 9.18 are deemed to include a Federal savings association.

[2] 12 CFR 9.18(b)(5)(i).

[3] 12 CFR 9.18(b)(5)(iii).

[4] *See, e.g.,* OCC Interpretive Letter No. 1121 (Aug. 2009) (Interpretive Letter 1121).

[5] *Id.*

[6] *See* 12 CFR 9.18(b)(5)(iv) (a bank may withdraw an account from a fund in cash, ratably in kind, a combination of cash and ratably in kind, or in any other manner permitted under state law where the bank national maintains the fund).

[7] *See* 12 CFR 9.18(b)(1) (written plan requirements).

the bank's ongoing efforts to satisfy withdrawal requests. The additional requests are capped at two years based on the OCC's experience with stressed market events and the need to balance the bank's and participants' interest in satisfying withdrawal requests at fair value with the participants' interest in timely withdrawals.

For example, under normal circumstances and pursuant to the standard withdrawal period in new paragraph (b)(5)(iii)(B), a bank that requires notice of withdrawal by December 31, 2020, is required to withdraw an account no later than December 31, 2021. However, if, due to exceptional circumstances, the bank receives a one-year extension of the standard withdrawal period pursuant to new paragraph (b)(5)(iii)(C), the bank is required to withdraw the account no later than December 31, 2022. If the bank later receives an additional one-year extension pursuant to new paragraph (b)(5)(iii)(D), the bank is required to withdraw the account no later than December 31, 2023.

III. Request for Comment

The OCC invites comment on all aspects of this rulemaking. In particular, the OCC invites comment on whether the OCC approval requirement and associated conditions for an extended withdrawal period are (1) sufficient to ensure that any extension of the withdrawal period would be consistent with fiduciary principles and applicable law; and (2) consistent with general business practices.

IV. Administrative Law Matters

A. Administrative Procedure Act

The OCC is issuing the interim final rule without prior notice and the opportunity for public comment and the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[8] Pursuant to section 553(b) of the APA, general notice and the opportunity for public comment are 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.'' [9]

The OCC is concerned that the disruption and stress in the real estate markets and other markets for not readily marketable assets resulting from the outbreak of the COVID–19 emergency, coupled with requiring a bank to withdraw an account within the standard withdrawal period, may undermine the ability of a bank to realize an appropriate value for CIF assets and be harmful in preserving the value of the CIF's assets for the benefit of fund participants. Accordingly, the OCC finds that the public interest is best served by implementing the interim final rule immediately upon publication in the **Federal Register**.

The APA also requires a 30-day delayed effective date, except for (1) substantive rules, which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[10] Because the rule relieves a restriction on banks, the interim final rule is exempt from the APA's delayed effective date requirement.[11] In addition, for the same reasons set forth above under the discussion of section 553(b)(B) of the APA, the OCC finds good cause to publish the interim final rule with an immediate effective date.

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

B. Congressional Review Act

For purposes of Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule.[12] If a rule is deemed a ''major rule'' by OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[13]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) 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 and export markets.[14]

For the same reasons set forth above, the OCC is adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[15] In light of the potential economic harm described above, the OCC finds that delaying the effective date of the interim final rule would be contrary to the public interest.

As required by the Congressional Review Act, the OCC will submit the interim final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The interim final rule contains reporting requirements under the Paperwork Reduction Act. With the OCC's approval, and if certain conditions are satisfied, a bank may withdraw an account from a collective investment fund up to one year after the end of the standard withdrawal period.[16] In addition, a bank may request that the OCC approve an extension beyond the one-year extension period, if certain conditions are satisfied.[17] Extensions past the initial one-year extension must be requested and approved annually, for a maximum of two years after the initial one-year extension period.[18]

Title of Information Collection: Fiduciary Activities.

OMB Control No.: 1557–0140.

Frequency: On occasion.

Affected Public: Businesses or other for-profit.

Estimated number of respondents: 4.

Total estimated annual burden: 220 burden hours.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the OCC's functions,

[8] 5 U.S.C. 553.

[9] 5 U.S.C. 553(b)(B).

[10] 5 U.S.C. 553(d).

[11] 5 U.S.C. 553(d)(1).

[12] 5 U.S.C. 801 *et seq.*

[13] 5 U.S.C. 801(a)(3).

[14] 5 U.S.C. 804(2).

[15] 5 U.S.C. 808.

[16] 12 CFR 9.18(b)(5)(iii)(C) introductory text.

[17] 12 CFR 9.18(b)(5)(iii)(D).

[18] *Id.*

including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[19] requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities.[20] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed previously, consistent with section 553(b)(B) of the APA, the OCC has determined for good cause that general notice and opportunity for public comment is impracticable and contrary to the public's interest, and therefore the OCC is not issuing a notice of proposed rulemaking. Accordingly, the OCC concludes that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply. Nevertheless, the OCC is interested in receiving feedback on ways that the OCC can reduce any potential burden of the interim final rule on small entities.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[21] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), each Federal banking agency must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[22] For the reasons described above, the OCC finds good cause exists under section 302 of RCDRIA to publish the interim final rule with an immediate effective date.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[23] requires the Federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. In light of this requirement, the OCC has sought to present the interim final rule in a simple and straightforward manner. The OCC invites comments on whether there are additional steps the OCC can take to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

G. Unfunded Mandates Act

As a general matter, the Unfunded Mandates Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.,* requires the preparation of a budgetary impact statement before promulgating a rule that includes a Federal mandate 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 in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published. *See* 2 U.S.C. 1532(a). Therefore, because the OCC has found good cause to dispense with notice and comment for this interim final rule, the OCC concludes that the requirements of UMRA do not apply to this interim final rule.

List of Subjects

12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the preamble, the OCC amends chapter I of Title 12 of the Code of Federal Regulations as follows:

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

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

Authority: 12 U.S.C. 24 (Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q-1, and 78w.

■ 2. Section 9.18 is amended by revising paragraph (b)(5)(iii):

§ 9.18 Collective investment funds.

* * * * *

(b) * * *

(5) * * *

(iii) *Prior notice period for withdrawals from funds with assets not readily marketable*—(A) A bank administering a collective investment fund described in paragraph (a)(2) of this section that is invested primarily in real estate or other assets that are not readily marketable may require a prior notice period, not to exceed one year, for withdrawals.

(B) A bank that requires a prior notice period for withdrawals must withdraw an account from the fund within the prior notice period or, if permissible under the fund's written plan, within one year after the date on which notice was required, except as described in paragraph (b)(5)(iii)(C) of this section.

(C) A bank may withdraw an account from the fund up to one year after the withdrawal period described in paragraph (b)(5)(iii)(B) of this section, with the OCC's approval, provided that the following conditions are met:

(*1*) The fund's written plan, including its notice and withdrawal policy, authorizes an extended withdrawal period and is fully disclosed to fund participants;

(*2*) The bank's board of directors, or a committee authorized by the board of

[19] 5 U.S.C. 601 *et seq.*

[20] Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total assets of $41.5 million or less. *See* 13 CFR 121.201.

[21] 12 U.S.C. 4802(a).

[22] 12 U.S.C. 4802.

[23] 12 U.S.C. 4809.

directors, determines that, due to unanticipated and severe market conditions for specific assets held by the fund, an extended withdrawal period is necessary in order to preserve the value of the fund's assets for the benefit of fund participants;

(*3*) The bank's board of directors, or a committee authorized by the board of directors, determines that the extended withdrawal period is consistent with 12 CFR part 9 and applicable law;

(*4*) The bank's board of directors, or a committee authorized by the board of directors, commits that the bank will act upon any withdrawal request as soon as practicable; and

(*5*) Any other condition imposed by the OCC, if the OCC determines that the condition is necessary or appropriate to protect the interests of fund participants.

(D) Upon request by a bank, the OCC may approve an extension beyond the one-year extension period described in paragraph (b)(5)(iii)(C) of this section if the OCC determines that the bank has made a good faith effort to satisfy withdrawal requests and the bank has been unable to satisfy such requests without causing harm to participants due to ongoing severe market conditions. The bank must also continue to satisfy the conditions described in paragraph (b)(5)(iii)(C) of this section. Extensions under this paragraph must be requested and approved annually, for a maximum of two years after the initial one-year extension period.

* * * * *

Brian P. Brooks,

Acting Comptroller of the Currency.

[FR Doc. 2020–17322 Filed 8–12–20; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0418; Product Identifier 2017–SW–053–AD; Amendment 39–21210; AD 2020–17–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Deutschland GmbH Model MBB–BK 117 D–2 helicopters. This AD was prompted by the discovery that certain longitudinal trim actuators, lateral trim actuators, and yaw trim actuators, which are certified for installation on MBB–BK 117 C–2 helicopters, were erroneously listed as eligible for installation on MBB–BK 117 D–2 helicopters. This AD requires removing the affected parts from service and prohibits installing the affected parts on MBB–BK 117 D–2 helicopters. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 17, 2020.

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

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0418; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5110; email: *david.hatfield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Helicopters Deutschland GmbH Model MBB–BK 117 D–2 helicopters. The NPRM published in the **Federal Register** on April 23, 2020 (85 FR 22684). The NPRM was prompted by the discovery that certain longitudinal trim actuators, lateral trim actuators, and yaw trim actuators, which are certified for installation on MBB–BK 117 C–2 helicopters, were erroneously listed as eligible for installation on MBB–BK 117 D–2 helicopters. The NPRM proposed to require removing the affected parts from service and prohibit installing the affected parts on MBB–BK 117 D–2 helicopters. The FAA is issuing this AD to address erroneously installed longitudinal trim actuators, lateral trim actuators, and yaw trim actuators, which could lead to reduced control of the helicopter.

The European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2017–0094, dated May 29, 2017 (EASA AD 2017–0094) (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for Airbus Helicopters Deutschland GmbH Model MBB–BK 117 D–2 helicopters with a serial number (S/N) up to 20126 inclusive, excluding S/N 20109, 20119, and 20124. 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–2020–0418.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

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

Related Service Information

Airbus Helicopters has issued Alert Service Bulletin MBB–BK117 D–2–67A–005, Revision 0, dated April 3, 2017. This service information contains procedures for replacing the affected parts.

Differences Between This AD and the EASA AD

The EASA AD has a compliance time of ''Within 400 flight hours, or within 12 months, whichever occurs first'' for the replacement. However, this AD requires replacing affected parts within 300 hours time-in-service instead. The

EASA AD prohibits the installation of an affected actuator on any helicopter, whereas this AD prohibits the installation of an affected actuator on any Model MBB–BK 117 D–2 helicopter instead.

Costs of Compliance

The FAA estimates that this AD would affect 29 helicopters of U.S. registry. Labor costs are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

If required, replacing an actuator would take about 1.5 work-hours and parts would cost about $20,000 for an estimated cost of $20,128.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–17–05 Airbus Helicopters Deutschland GmbH: Amendment 39–21210; Docket No. FAA–2020–0418; Product Identifier 2017–SW–053–AD.

(a) Effective Date

This AD is effective September 17, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model MBB–BK 117 D–2 helicopters, certificated in any category, with a serial number up to 20126 inclusive, excluding serial numbers 20109, 20119, and 20124, and with any of the following installed:

(1) Longitudinal trim actuator part number (P/N) 418–00878–001,

(2) Lateral trim actuator P/N 418–00878–051, or

(3) Yaw trim actuator P/N 418–00879–001.

(d) Subject

Joint Aircraft Service Component (JASC) Code 6700, Rotors flight control.

(e) Unsafe Condition

This AD was prompted by the discovery that certain longitudinal trim actuators, lateral trim actuators, and yaw trim actuators were erroneously listed as eligible for installation on Model MBB–BK 117 D–2 helicopters. The FAA is issuing this AD to address this condition, which could lead to reduced control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Within 300 hours time-in-service, remove from service any longitudinal trim actuator P/N 418–00878–001, lateral trim actuator P/N 418–00878–051, and yaw trim actuator P/N 418–00879–001.

(2) After the effective date of this AD, do not install longitudinal trim actuator P/N 418–00878–001, lateral trim actuator P/N 418–00878–051, or yaw trim actuator P/N 418–00879–001 on any Model MBB–BK 117 D–2 helicopter.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5110; email: *9-ASW-FTWAMOC-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.

(j) Related Information

(1) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2017–0094, dated May 29, 2017. 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–2020–0418.

(2) For more information about this AD, contact David Hatfield, Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: 817–222–5110; email: *david.hatfield@faa.gov.*

(3) Airbus Helicopters Alert Service Bulletin MBB–BK117 D–2–67A–005, Revision 0, dated April 3, 2017, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; phone: 972–641–0000 or 800–232–0323; fax: 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177.

Issued on August 7, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–17682 Filed 8–12–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0714; Project Identifier MCAI–2020–00589–G; Amendment 39–21189; AD 2020–16–05]

RIN 2120–AA64

Airworthiness Directives; Blanik Aircraft CZ s.r.o.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Blanik Aircraft CZ s.r.o. Model L 23 Super-Blanik gliders. This AD requires a one-time inspection of the rudder control cable attachment screws and hinge bolts, replacement of the cable attachment screws and hinge bolts if a crack is found, and reporting the inspection results to the manufacturer. This AD was prompted by reports of cracked rudder cable attachment screws. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective August 28, 2020.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 28, 2020.

The FAA must receive comments on this AD by September 28, 2020.

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

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

For service information identified in this final rule, contact Blanik Aircraft CZ s.r.o., Beranovych 65, Letnany, Praha, 199 00, Czech Republic; phone: +420 731 425 699; internet: *https://www.blanik.aero/customer-support;* email: *info@blanik.aero.* You may view this 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–2020–0714.

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–2020–0714; 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 mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2020–0068–E, dated March 23, 2020 (referred to after this as ''the MCAI''), to address an unsafe condition for Blanik Aircraft CZ s.r.o. Model L 23 Super-Blanik gliders. The MCAI states:

> During a standard maintenance procedure on an L 23 Super-Blaník sailplane, a crack was detected on a rudder control cable attachment screw.
>
> This condition, if not detected and corrected, could lead to rudder control failure, possibly resulting in loss of directional control of the sailplane.
>
> To address this unsafe condition, BACZ [Blanik Aircraft CZ s.r.o.] issued the MB [mandatory bulletin] and the IB [information bulletin] to provide inspection and replacement instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time inspection and, depending on findings, replacement of affected parts.

Blanik Aircraft CZ s.r.o. advises that reporting by operators and maintenance facilities indicates that this issue is not an isolated event. You may obtain further information by examining the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0714.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Blanik Mandatory Bulletin Document No. L23/060a, Revision 2, dated March 17, 2020, which contains procedures for inspecting the affected parts. The FAA also reviewed Blanik Information Bulletin Document No. L23/061b, Revision 1, dated March 17, 2020, which contains procedures for replacing the affected parts. 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 EASA, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Union, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this AD because it evaluated all the relevant information provided by EASA and determined the unsafe condition is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires a one-time inspection of the rudder control cable attachment screws and hinge bolts and, if a crack is found, replacement of the affected parts as specified in the service information described previously. This AD also requires reporting certain information to the manufacturer.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the required corrective actions must be accomplished before further flight. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason 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, we invite 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 No. FAA–2020–0714; Product Identifier MCAI–2020–00589–G'' at the beginning of your comments. The FAA will consider all comments received by the closing date and may amend this AD because of those comments.

Except for Confidential Business Information as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments we receive, without change, to *https://regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact it receives about this AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Jim Rutherford, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

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 the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 91 gliders 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
Inspect rudder cable attach fasteners	2.5 work-hours × $85.00 per hour = $212.50	$0.00	$212.50	$19,337.50
Reporting results to the manufacturer	1 hour × $85.00 per hour = $85.00	0.00	85.00	7,735.00

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The FAA has no way of determining the number of parts that might need these replacements.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace fasteners	3.5 work-hours × $85.00 per hour = $297.50	$213.00	$510.50

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–16–05 Blanik Aircraft CZ s.r.o.: Amendment 39–21189; Docket No. FAA–2020–0714; Project Identifier MCAI–2020–00589–G.

(a) Effective Date

This AD is effective August 28, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Blanik Aircraft CZ s.r.o. Model L 23 Super-Blanik gliders, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2720, RUDDER CONTROL SYSTEM.

(e) Unsafe Condition

This AD was prompted by reports of cracking on the rudder control cable attachment screw. The FAA is issuing this AD to detect and prevent a crack in a rudder control cable attachment screw, which could result in in-flight collapse of the screw. The unsafe condition, if not addressed, could result in rudder control failure and loss of control of the glider.

(f) Compliance

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

(g) Inspection and Replacement

(1) For purposes of this AD, an affected part means a part identified in table 1 to paragraph (g)(1) of this AD. The series refers to the second pair of digits in the glider serial number.

Table 1 to paragraph (g)(1) of this AD—*Affected Parts*

Part Name	Series	Part Number
Rudder hinge bolt	All	A730514N
Rudder control cable screw (left)	up to 79th series	A730515N
Rudder control cable screw (right)	up to 79th series	A740259N
Rudder control cable stud bolt (left)	from 80th series	A730545N
Rudder control cable stud bolt (right)	from 80th series	A730540N

(2) Before further flight after August 28, 2020 (the effective date of this AD), inspect each affected part in accordance with the Working Procedure, paragraphs A.1(1) through A.1(4) or paragraphs A.2(1) through A.2(4), as applicable for each part, of Blanik Mandatory Bulletin Document No. L23/060a, Revision 2, dated March 17, 2020.

(3) If there are no cracks in the inspection area of a part during the inspection required by paragraph (g)(2) of this AD, before further flight, install the rudder in accordance with the Working Procedure, paragraph A.1(8) or A.2(8), as applicable for each part, of Blanik Mandatory Bulletin Document No. L23/060a, Revision 2, dated March 17, 2020.

(4) If there are any cracks in the inspection area of a part during the inspection required by paragraph (g)(2) of this AD, before further flight, replace the part in accordance with the Working Procedure, paragraphs A.1, A.2, either A.3.1. or A.3.2 (as applicable), and A.4, of Blanik Information Bulletin Document No. L23/061b, Revision 1, dated March 17, 2020, and install the rudder in accordance with the Working Procedure, paragraph A.1(8) or A.2(8), as applicable for each part, of Blanik Mandatory Bulletin Document No. L23/060a, Revision 2, dated March 17, 2020.

(h) Reporting Requirement

Within 10 days after each inspection required by paragraph (g)(1) of this AD, report the following information to Blanik Aircraft CZ s.r.o. at the address provided in paragraph (m)(3) of this AD.

(1) Glider registration number (N number).

(2) Glider serial number.

(3) Glider total hours time-in-service.

(4) Number of starts by winch and tow (if known).

(5) Inspection results (including no findings).

(i) Credit for Previous Actions

You may take credit for the actions required by paragraphs (g)(2) and (g)(3) of this AD if you accomplish those actions before the effective date of this AD using Blanik Mandatory Bulletin Document No. L23/060a, Revision 1, dated March 4, 2020, and, Blanik Information Bulletin Document No. L23/061b, original issue, dated March 4, 2020. If you take this credit, you do not have to comply with the reporting requirement in paragraph (h) of this AD.

(j) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(k) Alternative Methods of Compliance (AMOCs)

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

(l) Related Information

(1) For more information about this AD, contact Jim Rutherford, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; phone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

(2) Refer to European Union Aviation Safety Agency (EASA) AD No. 2020–0068–E, dated March 23, 2020, for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2020–0714.

(m) Material Incorporated by Reference

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

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

(i) Blanik Mandatory Bulletin Document No. L23/060a, Revision 2, dated March 17, 2020.

(ii) Blanik Information Bulletin Document No. L23/061b, Revision 1, dated March 17, 2020.

(3) For Blanik service information identified in this AD, contact Blanik Aircraft CZ s.r.o., Beranovych 65, Letnany, Praha, 199 00, Czech Republic; phone: +420 731 425 699; internet: *https://www.blanik.aero/customer-support;* email: *info@blanik.aero.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the internet at *https://www.regulations.gov* by searching for locating Docket No. FAA–2020–0714.

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

Issued on July 28, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–17650 Filed 8–12–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0711; Project Identifier MCAI–2020–00719–A; Amendment 39–21188; AD 2020–16–04]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited 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 Pacific Aerospace Limited Model 750XL airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as an incorrect illustration of the screw jack assembly in the airplane maintenance manual, which may cause potential errors with installation. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 2, 2020.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 2, 2020.

The FAA must receive comments on this AD by September 28, 2020.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 843 6134; email: *pacific@aerospace.co.nz;* internet: *https://www.aerospace.co.nz/.* You may view this 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 locating Docket No. FAA–2020–0711.

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–2020–0711; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority (CAA), which is the aviation authority for New Zealand, has issued AD DCA/750XL/38A, dated September 5, 2019 (referred to after this as ''the MCAI''), to correct an unsafe condition for Pacific Aerospace Limited Model 750XL airplanes. The MCAI states:

> DCA/750XL/38A with effective date 5 September 2019 and a 5 hour TIS compliance is prompted by two reports of finding incorrectly assembled flap screw jacks on affected aircraft. This AD is revised to introduce Pacific Aerospace Mandatory Service Bulletin (MSB) PACSB/XL/117 issue 2, dated 21 August 2019 and expand the AD applicability to include additional aircraft S/N and parts held as spares.
>
> There are no additional AD requirements for aircraft and affected parts in compliance with DCA/750XL/38.
>
> A Pacific Aerospace Ltd (PAL) review of the 750XL Maintenance Manual (MM) and the 750XL Illustrated Parts Manual (IPM) has determined that the orientation shown in these two manuals for the flap screw jack bearing stop is incorrect. PAL has subsequently issued temporary revisions dated 5 June 2019, for both the 750XL MM and the 750XL IPM to correct the orientation shown for the flap screw jack bearing stop. These temporary revisions can be obtained from Pacific Aerospace Ltd, Hamilton, New Zealand.

Due to the possibility that there may be incorrectly assembled flap screw jack assemblies in service, this [CAA] AD is issued to introduce the corrective actions in Pacific Aerospace Mandatory Service Bulletin (MSB) PACSB/XL/117 issue 2, dated 21 August 2019. The aircraft may be recovered back to a maintenance base for the inspection, provided the flight is a non-hire or reward flight with no passengers carried.

You may examine the MCAI on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0711.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pacific Aerospace Mandatory Service Bulletin PACSB/XL/117, Issue 2, dated August 21, 2019. The service information contains procedures for inspecting the flap screw jack assembly to verify proper configuration of the assembly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

Pacific Aerospace Limited has also issued temporary revisions for the P–750 XSTOL Maintenance Manual for the 750XL Aircraft, Revision 16, dated October 2018; and the P–750 XSTOL III Maintenance Manual P/N 11–08002–1 for the 750XL (EFIS) Aircraft, Revision 2, dated August 2018. These temporary revisions contain corrections for the orientation of the flap screw jack bearing stop.

FAA's Determination and Requirements of the AD

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the possibility there may be incorrectly assembled flap screw jack assemblies in service, which could cause failure of the flap screw jack and result in a failure of the flap actuator to fully extend the flaps during the completion of a final approach. This condition, if not detected and corrected, could result in a longer landing distance and a possible runway overrun condition. The risk assessment received by the FAA, and reconfirmed in July of 2020, indicates that urgent action is required. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason 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, we invite 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 the Docket Number FAA–2020–0711 and Product Identifier MCAI–2020–00719–A at the beginning of your comments. We will post all comments we receive, without change, to *https://www.regulations.gov,* including any personal information you provide.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments we receive, 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 we receive about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Mike Kiesov, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Costs of Compliance

The FAA estimates that this AD will affect 22 products of U.S. registry. The FAA also estimates that it will take 1 work-hour per product to comply with the inspection requirement of this AD. The average labor rate is $85 per work-hour.

Based on these figures, the FAA estimates the cost of the inspection for U.S. operators to be $1,870, or $85 per product.

In addition, the FAA estimates that any necessary follow-on actions will take 4 work-hours and require parts costing $50, for a cost of $390 per product. The FAA has no way of determining the number of products that may need these actions.

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

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2020–16–04 Pacific Aerospace Limited: Amendment 39–21188; Docket No. FAA–2020–0711; Project Identifier MCAI–2020–00719–A.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 2, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pacific Aerospace Limited Model 750XL airplanes, serial numbers 101 through to 215, 220, 8001, and 8002, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by an incorrect illustration of the screw jack assembly in the airplane maintenance manual, thus causing potential errors with installation. The FAA is issuing this AD to require an inspection of the flap screw jack assembly to verify proper configuration of the assembly and make the correction if found improperly installed. This unsafe condition, if not addressed, could cause fatigue failure of a flap screw jack, which could result in a failure of the flap actuator to fully extend the flaps during the completion of a final approach, a longer landing distance, and consequent runway overrun condition.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) and (2) of this AD.

(1) Within 20 hours time-in-service after September 2, 2020 (the effective date of this AD), inspect the left hand (LH) and right hand (RH) flap screw jack assemblies for proper installation by following the Accomplishment Instructions, paragraphs A.1) through A.3), of Pacific Aerospace Mandatory Service Bulletin (MSB) PACSB/XL/117, Issue 2, dated August 21, 2019 (PACSB/XL/117, Issue 2). If a flap screw jack assembly is not properly installed as shown in figures 1 and 2 of PACSB/XL/117, Issue 2, before further flight, comply with the Accomplishment Instructions, Part B, of PACSB/XL/117, Issue 2.

(2) As of September 2, 2020 (the effective date of this AD), do not install a LH flap screw jack assembly P/N 11–45621–1 or RH flap screw jack assembly P/N 11–45622–1 on any airplane, unless it is installed in accordance with the Accomplishment Instructions, Part B, of PACSB/XL/117, Issue 2.

(g) Credit for Previous Actions

You may take credit for the actions required by paragraph (f)(1) of this AD if you performed those actions before the effective date of this AD using Pacific Aerospace MSB PACSB/XL/117, Issue 1, dated June 7, 2019.

(h) Special Flight Permit

Special flight permits may be issued may be issued for the purpose of operating the airplane to a location where the requirements of this AD can be performed with the following limitations: Flights must not carry passengers.

(i) Alternative Methods of Compliance (AMOCs)

The Manager, Small Airplane Standards Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(j) Related Information

Refer to mandatory continuing airworthiness information (MCAI) New Zealand Civil Aviation Authority AD No. DCA/750XL/38A, dated September 5, 2019, for related information. You may examine the MCAI on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0711.

(k) Material Incorporated by Reference

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

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

(i) Pacific Aerospace Mandatory Service Bulletin PACSB/XL/117, Issue 2, dated August 21, 2019.

(ii) [Reserved]

(3) For Pacific Aerospace Limited service information identified in this AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; phone: +64 7843 6144; fax: +64 7843 6134; email: *pacific@aerospace.co.nz;* internet: *https://www.aerospace.co.nz/.*

(4) You may view this 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 Docket No. FAA–2020–0711.

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

Issued on July 29, 2020.

Gaetano A. Sciortino,

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

[FR Doc. 2020–17607 Filed 8–12–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2014–N–1021]

RIN 0910–AH00

Food Labeling; Gluten-Free Labeling of Fermented or Hydrolyzed Foods

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is issuing a final rule to establish requirements

concerning ''gluten-free'' labeling for foods that are fermented or hydrolyzed or that contain fermented or hydrolyzed ingredients. These requirements f are needed to help ensure that individuals with celiac disease are not misled and receive truthful and accurate information with respect to fermented or hydrolyzed foods labeled as ''gluten-free.'' Currently, FDA knows of no scientifically valid analytical method effective in detecting and quantifying with precision the gluten protein content in fermented or hydrolyzed foods in terms of equivalent amounts of intact gluten proteins. Thus, we plan to evaluate compliance of such fermented or hydrolyzed foods that bear a ''gluten-free'' claim based on records that are made and kept by the manufacturer of the food bearing the ''gluten-free'' claim and made available to us for inspection and copying. The records need to provide adequate assurance that the food or ingredients used in the food are ''gluten-free'' before fermentation or hydrolysis. Once we identify that a scientifically valid method has been developed that can accurately detect and quantify gluten in fermented or hydrolyzed foods or ingredients, it would no longer be necessary for the manufacturer of foods bearing the ''gluten-free'' claim to make and keep these records. In addition, because currently there is no scientifically valid analytical method effective in detecting and quantifying the gluten protein content in fermented or hydrolyzed foods the final rule requires the manufacturer of these kinds of foods bearing the ''gluten-free'' claim to document that it has adequately evaluated the potential for gluten cross-contact and, if identified, that the manufacturer has implemented measures to prevent the introduction of gluten into the food during the manufacturing process. Likewise, the final rule requires manufacturers of foods that contain fermented or hydrolyzed ingredients and bear the ''gluten-free'' claim to make and keep records that demonstrate with adequate assurance that the fermented or hydrolyzed ingredients are ''gluten-free'' in compliance with the 2013 gluten-free food labeling final rule. Finally, this final rule states that we will evaluate compliance of distilled foods by verifying the absence of protein using scientifically valid analytical methods that can reliably detect the presence of protein or protein fragments in the distilled food.

DATES:

Effective date: This rule is effective October 13, 2020.

Compliance date: The compliance date of this final rule is August 13, 2021.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule into the ''Search'' box and follow the prompts, and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: With regard to the final rule: Carol D'Lima, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5001 Campus Dr., Rm. 4D–022, College Park, MD 20740, 240–402–2371, *Carol.Dlima@fda.hhs.gov.* With regard to the information collection: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

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I. Executive Summary

A. Purpose and Coverage of the Final Rule

Celiac disease, a hereditary, chronic inflammatory disorder of the small intestine, has no cure, but individuals who have this disease are advised to avoid all sources of gluten in their diet to protect against adverse health effects associated with the disease. Relevant educational materials are available on FDA's website at *https://www.fda.gov/food/food-labeling-nutrition/gluten-free-labeling-foods.* In the **Federal Register** of August 5, 2013 (78 FR 47154), we published a final rule that defines the term ''gluten-free'' and establishes requirements for the voluntary use of that term in food labeling (the 2013 gluten-free food labeling final rule). The 2013 gluten-free food labeling final rule (now codified at § 101.91 (21 CFR 101.91)) is intended to ensure that individuals with celiac disease are not misled and are provided with truthful and accurate information with respect to foods so labeled. The regulation provides that when compliance with the rule is based on an analysis of the food, we will use a scientifically valid method that is suitable for the reliable detection of 20 parts per million (ppm) gluten in the food and has been validated extensively for the detection of gluten in both raw and cooked or baked products (§ 101.91(c)). In the context of this rule for the Gluten-Free Labeling of Fermented or Hydrolyzed Foods, the limit for gluten refers to intact gluten. We established this 20 ppm limit for gluten considering multiple factors, including currently available analytical methods and the needs of individuals with celiac disease, as well as factors such as ease of compliance and enforcement, stakeholder concerns, economics, trade issues, and legal authorities. Although test methods for the detection of gluten fragments in fermented or hydrolyzed foods have advanced, currently, we know of no scientifically valid analytical method effective in detecting and quantifying with precision the gluten protein content in fermented or hydrolyzed foods in terms of equivalent amounts of intact gluten. Thus, alternative means are necessary to verify compliance with the provisions of the 2013 gluten-free food labeling final rule for fermented or hydrolyzed foods, such as cheese, yogurt, vinegar, sauerkraut, pickles, green olives, beers, and wine, or hydrolyzed plant proteins used to improve flavor or texture in processed foods such as soups, sauces, and seasonings.

B. Summary of the Major Provisions of the Final Rule

Section 101.91 (21 CFR 101.91) defines the term ''gluten-free'' to mean that the food bearing the claim does not contain: (1) An ingredient that is a gluten-containing grain; (2) an ingredient that is derived from a gluten-containing grain and that has not been processed to remove gluten; or (3) an ingredient that is derived from a gluten-containing grain and that has been processed to remove gluten if the use of that ingredient results in the presence of 20 parts per million (ppm) or more gluten in the food; or inherently does

not contain gluten, and that any unavoidable presence of gluten in the food is below 20 ppm gluten. A food that bears the claim ''no gluten,'' ''free of gluten,'' or ''without gluten'' in its labeling and fails to meet the requirements for the ''gluten-free'' claim will be deemed to be misbranded. This final rule amends § 101.91(c) to provide alternative means for FDA to verify compliance based on records that are maintained by the manufacturer of the fermented or hydrolyzed food bearing the ''gluten-free'' claim and made available to us for inspection and copying.

This final rule requires that, for foods that are fermented or hydrolyzed and bear the ''gluten-free'' claim, the manufacturer must have records that demonstrate with adequate assurance that the food is ''gluten-free'' in compliance with § 101.91(a)(3) before fermentation or hydrolysis. Such adequate assurance can include test results, certificates of analysis (CoAs), or other appropriate verification documentation for each of the ingredients used in the food. (A CoA is a document indicating specified test results performed on product(s) by a qualified laboratory that has certified the test results.) Alternatively, adequate assurance can include results of tests on the food itself, rather than the ingredients, before fermentation or hydrolysis of the food. In addition, the final rule requires documentation by the manufacturer that any potential for gluten cross-contact has been adequately assessed, and where such a potential has been identified, the manufacturer has implemented measures to prevent the introduction of gluten into the food during the manufacturing process. Also, for foods containing one or more fermented or hydrolyzed ingredients and bearing the ''gluten-free'' claim, manufacturers must make and keep records demonstrating with adequate assurance that the fermented or hydrolyzed ingredients are ''gluten-free'' under § 101.91(a)(3) before fermentation or hydrolysis and the potential for gluten cross-contact has been adequately assessed, and where such potential has been identified, measures have been implemented to prevent introduction of gluten during the ingredient manufacturing process). This includes, but is not limited to, CoAs or other appropriate verification documentation from the ingredient suppliers and/or results of testing conducted by the ingredient suppliers.

The final rule also requires that the manufacturer retain records for at least 2 years after introduction or delivery for introduction of the food into interstate commerce. The final rule allows these records to be kept as original records, as true copies, or as electronic records, and manufacturers would have to make the records available to us for inspection and copying, upon request, during an inspection. The records need to be reasonably accessible to FDA during an inspection at each manufacturing facility (even if not stored on site) to determine whether the food has been manufactured and labeled in compliance with § 101.91. Records that can be immediately retrieved from another location by electronic means are considered reasonably accessible. The final rule also provides that we will evaluate compliance of distilled foods, such as distilled vinegar, by verifying the absence of protein using scientifically valid analytical methods that can reliably detect the presence of protein or protein fragments in the food.

C. Legal Authority

Consistent with section 206 of the Food Allergen Labeling and Consumer Protection Act (FALCPA) and sections 403(a)(1), 201(n), and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 343(a)(1), 321(n), and 371(a)), we are issuing requirements to permit the voluntary use of the term ''gluten-free'' in the labeling of foods that are fermented, hydrolyzed, or distilled, or that contain fermented, hydrolyzed, or distilled ingredients.

D. Costs and Benefits

Full compliance with this final rule would have annualized costs of about $7 million to $11 million per year at 3% discount rate and annualized costs of $7 million to $11 million at 7% discount rate. For the rule to break-even with costs, the annualized benefits would need to be at least $8.8 million at a 3% discount rate and a $9.1 million at a 7% discount rate. Based on our simulation analysis, the rule would break-even with primary cost estimates discounted at 7% if at least 0.07% of estimated individuals with celiac disease following a gluten-free diet benefit from the rule each year.

II. Table of Abbreviations and Acronyms Commonly Used in This Document

Abbreviation	What it means
ANPRM	Advance Notice of Proposed Rulemaking.
CPG	Compliance Policy Guide.
E.O.	Executive Order.
FALCPA	Food Allergen Labeling and Consumer Protection Act.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
GMP	Good Manufacturing Practice.

III. Background

A. Need for the Regulation/History of This Rulemaking

Celiac disease is a hereditary, chronic inflammatory disorder of the small intestine triggered by the ingestion of certain proteins referred to as gluten, which occur in wheat, rye, barley, and crossbreeds of these grains. The main protein of wheat gluten is gliadin; the similar proteins of rye and barley are termed secalin and hordein, respectively. Both major protein fractions of gluten, gliadins and glutenins, are active in celiac disease. All the gliadins and glutenins subunits are reported to be harmful for individuals with celiac disease (Ref. 1). Celiac disease has no cure, and individuals who have this disease are advised to avoid all sources of gluten in their diet to protect against adverse health effects associated with the disease.

In the **Federal Register** of August 5, 2013 (78 FR 47154), we published a final rule that defines the term ''gluten-free'' and establishes requirements for the voluntary use of that term in food labeling. The 2013 gluten-free food labeling final rule, which is codified at § 101.91, is intended to help ensure that individuals with celiac disease are not misled and receive truthful and accurate information with respect to foods labeled as ''gluten-free.'' The 2013 gluten-free food labeling final rule does not require manufacturers who label their foods as ''gluten-free'' to test those foods for the presence of gluten. However, they may choose to do so to ensure that the food does not contain 20 ppm or more gluten. The regulation provides that, when compliance with [the rule] is based on an analysis of the food, we will use a scientifically valid method that can reliably detect the presence of 20 ppm gluten in a variety of food matrices, including both raw and cooked or baked products (§ 101.91(c)). We may conduct such testing to verify that foods labeled ''gluten-free'' meet the criteria for ''gluten-free'' labeling, including the part of the ''gluten-free'' definition that states that any unavoidable presence of gluten in the food bearing the claim in its labeling is below 20 ppm gluten (*i.e.,* below 20 mg gluten per kg of food) (§ 101.91(a)(3)(ii)).

Through comments we received in response to the proposed rule for gluten-free labeling of foods that appeared in the **Federal Register** of January 23, 2007 (72 FR 2795) and to a related notice reopening of the comment period that we published in the **Federal Register** of August 3, 2011 (76 FR 46671), we

became aware that fermented or hydrolyzed foods, some of which are labeled as ''gluten-free,'' cannot be tested for a quantitative measure of intact gluten using currently available analytical methods. In the notice that we published in the **Federal Register** of August 3, 2011 (76 FR 46671 at 46673), we stated that we recognized that, for some food matrices (*e.g.,* fermented or hydrolyzed foods), there were no currently available validated methods that could be used to accurately determine if those foods contained <20 ppm gluten. We also stated that we were considering whether to require manufacturers of such foods to have a scientifically valid method that would reliably and consistently detect gluten at 20 ppm or less before including a ''gluten-free'' claim in the labeling of their foods. We requested comments on this proposed approach as well as on whether we also should require these manufacturers to maintain records on test methods, protocols, and results and to make these records available to us upon inspection.

The notice explained that we interpret the term ''scientifically valid method'' to mean a method that is ''accurate, precise, and specific for its intended purpose and where the results of the method evaluation are published in the peer-reviewed scientific literature. In other words, a scientifically valid test is one that consistently and reliably does what it is intended to do'' (78 FR 47154 at 47165).

Although test methods for the detection of gluten fragments in fermented or hydrolyzed foods have advanced, as of August 13, 2020, we know of no scientifically valid analytical method effective in detecting and quantifying with precision the gluten protein content in fermented or hydrolyzed foods in terms of equivalent amounts of intact gluten proteins. Sandwich Enzyme-Linked Immunosorbent Assay (ELISA)-based methods are not effective in detecting and quantifying gluten proteins that are no longer intact as a result of fermentation or hydrolysis since the method requires at least two epitopes to work. Competitive ELISA-based methods that recognize a single epitope have been developed and may eventually overcome the detection problems encountered using current sandwich ELISA-based assays with fermented or hydrolyzed food. While some studies have validated the reproducibility of competitive ELISA-based test methods, the lack of appropriate calibration standards or suitable reference materials make accurate quantification of gluten content difficult. This uncertainty creates problems in equating these test results to an equivalent amount of intact gluten in the fermented or hydrolyzed product. Without reference standards to gauge the response for detection and quantification of gluten to produce fermented or hydrolyzed products, such quantification is uncertain and potentially inaccurate (Ref. 2). Thus, we need other means to verify compliance for these foods.

B. What did we propose to do?

In the **Federal Register** of November 18, 2015 (80 FR 71990), we published a proposed rule to establish requirements concerning ''gluten-free'' labeling for foods that are fermented, hydrolyzed, or distilled, or that contain fermented, hydrolyzed, or distilled ingredients. In brief, we proposed to evaluate compliance with the 2013 gluten-free food labeling final rule of such fermented or hydrolyzed foods that bear a ''gluten-free'' claim based on records that are made and kept by the manufacturer of the food bearing the ''gluten-free'' claim and made available to us for inspection and copying. The records would need to provide adequate assurance that food is ''gluten-free'' in compliance with the 2013 gluten-free food labeling final rule before fermentation or hydrolysis. In addition, we proposed to require the manufacturer of fermented or hydrolyzed foods bearing the ''gluten-free'' claim to document that it has adequately evaluated the potential for gluten cross-contact and, if identified, that the manufacturer has implemented measures to prevent the introduction of gluten into the food during the manufacturing process. Likewise, we proposed to require manufacturers of foods that contain fermented or hydrolyzed ingredients and bear the ''gluten-free'' claim to make and keep records that demonstrate with adequate assurance that the fermented or hydrolyzed ingredients are ''gluten-free'' in compliance with § 101.91. Finally, we proposed to evaluate compliance of distilled foods by verifying the absence of protein using scientifically valid analytical methods that can reliably detect the presence of protein or protein fragments in the distilled food. We proposed to revise § 101.91(b)(1), (b)(2), and (c) to state that when a scientifically valid method is not available because the food or ingredient is fermented or hydrolyzed, the manufacturer of such foods bearing the claim must make and keep records regarding the fermented or hydrolyzed food that demonstrate: (1) Adequate assurance that the food is ''gluten-free'' before fermentation or hydrolysis; (2) the manufacturer has adequately evaluated their processing for any potential for gluten cross-contact; and (3) where the potential for gluten cross-contact has been identified, the manufacturer has implemented measures to prevent the introduction of gluten into the food during the manufacturing process. For foods for which a scientifically valid method to detect and quantify gluten is not available because the food is distilled, compliance would be evaluated by verifying the absence of protein (and thus gluten) in the distilled component using scientifically valid analytical methods that can reliably detect the presence or absence of protein or protein fragments in the food.

IV. Legal Authority

We are issuing this final rule under section 206 of FALCPA which directs the ''Secretary of Health and Human Services, in consultation with appropriate experts and stakeholders,'' to ''issue a rule to define, and permit use of, the term ''gluten-free'' on the labeling of foods.'' Section 403(a)(1) of the FD&C Act states that a food shall be deemed to be misbranded if its labeling is false or misleading in any particular. In determining whether food labeling is misleading, section 201(n) of the FD&C Act explicitly provides for consideration of the extent to which the labeling fails to reveal facts that are material with respect to the consequences which may result from the use of the food to which the labeling relates under conditions of use as are customary or usual. Section 701(a) of the FD&C Act vests the Secretary (and by delegation, FDA) with authority to issue regulations for the efficient enforcement of the FD&C Act. Consistent with section 206 of FALCPA and sections 403(a)(1), 201(n), and 701(a) of the FD&C Act, we are establishing requirements for the use of the term ''gluten-free'' for fermented and hydrolyzed foods.

Because there is no scientifically valid analytical method available that can both reliably detect and accurately quantify the equivalent of 20 ppm intact gluten in foods that are fermented or hydrolyzed, or that contain fermented or hydrolyzed ingredients, we are establishing requirements for manufacturers to make and keep records containing information that provide adequate assurance that their food complies with the definition of ''gluten-free,'' including information that they gather or produce about their ingredients and the details of their manufacturing practices. These record requirements would help ensure that the use of the term ''gluten-free'' is

accurate, truthful, and not misleading based on information known to the manufacturer that FDA would not otherwise be able to access, and to facilitate efficient and effective action to enforce the requirements when necessary. Our authority to establish records requirements has been upheld under other provisions of the FD&C Act where we have found such records to be necessary (*National Confectioners Assoc.* v. *Califano,* 569 F.2d 690, 693–694 (D.C. Cir. 1978)).

The final rule requires records only for foods for which an adequate analytical method is not available. The records will allow us to verify that the ''gluten-free'' claim on foods that are fermented or hydrolyzed, or contain fermented or hydrolyzed ingredients, is truthful and complies with the requirements of the definition. The authority granted to us under sections 701(a), 403(a)(1), and 201(n) of the FD&C Act not only includes authority to establish records requirements, but also includes authority to access to such records. Without such authority, we would not know whether the use of the term ''gluten-free'' on the label or in the labeling of these foods is truthful and not misleading under sections 403(a)(1) and 201(n) of the FD&C Act. The introduction or delivery for introduction into interstate commerce of a misbranded food is a prohibited act under section 301(a) of the FD&C Act (21 U.S.C. 331(a)). Thus, to determine whether the food is misbranded, and the manufacturer has committed a prohibited act, we must have access to the manufacturer's records that we are requiring be made and kept under sections 403(a)(1), 201(n), and 701(a) of the FD&C Act. Failure to make and keep records, and provide the records to FDA, as described in § 101.91(c)(4), would result in the food being misbranded under sections 403(a)(1) and 201(n) of the FD&C Act.

V. Comments on the Proposed Rule and FDA Responses

A. Introduction

We received over 500 comments on the proposed rule. We received comments from consumers; consumer groups; trade organizations; industry; public health organizations; public advocacy groups; and other organizations. We have numbered each comment to help distinguish among different topics. We have grouped similar comments together under the same number, and, in some cases, we have separated different issues discussed in the same comment letter and designated them as distinct comments for purposes of our responses. The number assigned to each comment topic is for organizational purposes only and does not signify the comment's value, importance, or the order in which it was received.

B. Comments and FDA Responses

1. Request for Exemption for Inherently Gluten-Free Ingredients and Enzymes

(Comment 1) Several comments stated that the rule would have the unintended consequence of prohibiting certain inherently gluten-free foods and ingredients from bearing a ''gluten-free'' claim. The comments said that the added recordkeeping requirements were an unnecessary burden on manufacturers and that, in other cases, it might be impossible to request records from remote geographic regions for commodity items that are fermented immediately after harvest (*e.g.,* cocoa beans). The comments pointed out that some ingredients are at low risk of contact with gluten-containing grains at harvest as well as across the supply chain. The comments stated that FDA should make clear in the preamble to the final rule that inherently gluten-free foods, such as milk and dairy ingredients, vanilla beans, enzymes (grown on media containing gluten), flavor extracts, and cocoa beans, that have a low risk of gluten cross-contact are exempt from the final rule. The comments requested that proposed § 101.91(c)(3) not apply to foods containing fermented or hydrolyzed ingredients derived from foods that are inherently ''gluten-free'' and do not have a known or reasonable probability of gluten cross-contact. Alternatively, some comments suggested that we revise the rule to apply only to fermented foods produced from gluten-containing grains or having a known or reasonably foreseeable risk of cross-contact with a gluten-containing grain (*e.g.,* gluten-free beers). The comments suggested that we define ''fermented food'' for the purposes of this section as ''a food or ingredient derived from a gluten-containing grain by fermentation.''

The comments also stated that, if we could not create an exemption, we should clarify that testing is not required for inherently gluten-free ingredients when there is no cross-contact with gluten-containing ingredients. Also, if testing is done, it should only be at the frequency necessary to prove the ''gluten-free'' claim and records regarding cross-contact should be flexible based on ingredients and facility. Further, the comments stated that we should clarify whether documentation providing general information on the commodity and regional growing practices in countries of origin would be sufficient to meet the ''gluten-free'' claim requirements.

(Response 1) It is our experience that all foods may, at some point during manufacture, have a risk of cross-contact with a gluten-containing grain depending on manufacturer operations, sources of ingredients, movements through the supply chain and distribution, etc. There may be inherently gluten-free foods or ingredients that still do not meet the definition of ''gluten-free'' due to cross-contact with gluten that leads to gluten content in the food that is at or above 20 ppm. Conversely, there also may be inherently gluten-free foods that have some cross-contact with gluten-containing products but are still able to bear the ''gluten-free'' claim because the presence of gluten in the food due to cross-contact is less than 20 ppm. Just as we concluded in the preamble to the 2013 gluten-free food labeling final rule (78 FR 47154 at 47168), all food bearing a ''gluten-free'' claim, regardless if they are inherently gluten-free or not, must meet the definition of ''gluten-free.'' In 2015, we stated in the preamble to the proposed rule for gluten-free labeling of fermented or hydrolyzed foods that the specific types of records that would provide adequate assurance that fermented or hydrolyzed ingredients with a high likelihood of gluten cross-contact, such as grains and legumes, may differ from the records that would provide adequate assurance for ingredients with a lower likelihood of gluten cross-contact, such as dairy (80 FR 71990 at 71996 through 71998). For example, a manufacturer of fermented or hydrolyzed foods from non-gluten-containing grains, legumes, or seeds that are susceptible to cross-contact with gluten-containing grains bearing the ''gluten-free'' claim may choose to obtain a CoA from the ingredient suppliers or test the ingredients before fermentation and maintain records of the test results. A manufacturer of products bearing the ''gluten-free'' claim made from inherently gluten-free ingredients, such as milk, or fruit, that have low probability of cross-contact with gluten-containing grains may be more likely to use other appropriate verification documentation. Thus, we decline to modify § 101.91(c)(3) to exclude any group of foods or ingredients because doing so does not consider the possibility of cross-contact.

We also decline to define the term ''fermented food'' as a food or ingredient derived only from a gluten-containing

grain by fermentation. The final rule is intended to cover all foods that are fermented or contain fermented ingredients and bear the term ''gluten-free,'' not just those from gluten-containing grains. Regardless of whether the food that is subjected to fermentation contains gluten, we cannot exclude the possibility that the food could be exposed to gluten due to cross-contact. It is important that all manufacturers who choose to use the ''gluten-free'' claim on their foods that are fermented or contain fermented ingredients evaluate their process for potential gluten cross-contact.

As requested by a comment, we are clarifying that the final rule does not require testing of ingredients. The final rule requires manufacturers to adequately evaluate their processing for any potential for gluten cross-contact. Such assessment involves evaluation of each individual manufacturing process to find out if there is a known or reasonably foreseeable risk of cross-contact with gluten-containing grains and maintenance of records to indicate that measures have been implemented to prevent the introduction of gluten into the food during the manufacturing process. As noted in the preamble to the 2015 proposed rule, we are aware that some foods and ingredients are more at risk than others (80 FR 71990 at 71996 through 71998). The manufacturer is best suited to decide how to adequately evaluate any potential for gluten cross-contact during its manufacturing process as well as the measures that should be taken to prevent the introduction of gluten into the food during that manufacturing process. The final rule requires that manufacturers of food products covered by the rule make and keep records providing adequate assurance that: (1) The food is ''gluten-free'' before fermentation or hydrolysis; (2) the manufacturer has adequately evaluated the potential for cross-contact with gluten during the manufacturing process; and (3) if necessary, measures are in place to prevent the introduction of gluten into the food during the manufacturing process. In some cases, adequate assurance may be provided through testing the ingredients when there is a scientifically valid method that can reliably detect the presence of 20 ppm gluten. Testing should indicate that foods or ingredients contain less than 20 ppm gluten before fermentation or hydrolysis. To help address potential gluten cross-contact during the manufacturing process, the final rule, at § 101.91(c)(2) and (3), requires that manufacturers of a fermented or hydrolyzed product who wish to use a ''gluten-free'' claim make and keep records that provide adequate assurance that they have carefully evaluated their processing for any potential for gluten cross-contact, and where the potential exists, manufacturers have implemented measures to prevent the introduction of gluten into the food. Through this process, a manufacturer can assure that the food or its ingredients comply with § 101.91(a)(3) before fermentation or hydrolysis. As specified in the preamble to the 2015 proposed rule (80 FR 71990 at 71996 through 71998), the records providing adequate assurance that the food is ''gluten-free'' before fermentation or hydrolysis could include records of test results conducted by the manufacturer or an ingredient supplier, CoA, or other appropriate verification documentation for the food itself or each of the ingredients used in the food. We would expect manufacturers of fermented or hydrolyzed foods that bear the ''gluten-free'' claim, as part of their routine operations, to test their food or ingredients with the sufficient frequency to ensure that the gluten level in the food or in each ingredient is below 20 ppm before fermentation or hydrolysis. Alternatively, as we noted in the preamble to the 2013 gluten-free food labeling final rule (78 FR 47154 at 47167), manufacturers, as part of routine operations, may rely on records, such as CoAs, from their suppliers to determine that each ingredient is below 20 ppm gluten. Similarly, for ingredients received from outside suppliers, manufacturers may document a visit to a supplier's facility, a review of supplier's records, or a review of written documentation from a supplier to verify the compliance with § 101.91(a)(3) for these ingredients. We find it is appropriate to allow a manufacturer to use any means of verification they develop, if the manufacturer can document that such verification provides adequate assurance that the ingredients comply with § 101.91(a)(3). We do not specify the types of records to be kept, so the manufacturer could, for example, create records regarding the ingredients used or maintain records or CoAs obtained from a supplier.

As we discussed in the preamble to the 2013 gluten-free food labeling final rule (78 FR 47154 at 47173), we expect foods bearing the ''gluten-free'' claim to be manufactured using the controls necessary to minimize cross-contact with all gluten sources to ensure that any amount of gluten in the food from gluten cross-contact is as low as possible and that the food has less than 20 ppm gluten. Also, we would accept information on growing practices and product segregation as records to meet the requirements of this final rule.

(Comment 2) Several comments expressed concerns regarding some aspects of the proposed rule as it could relate to enzymes. For example, some comments stated that commercial enzymes are often produced by microbes grown on media containing wheat and that these enzymes are considered to be processing aids when used in other foods produced by fermentation. The comments said that very little gluten protein (if transferred to the food by the enzyme) may survive the fermentation process. Therefore, the comments said these enzymes should not be covered under the rule. The comments stated that the production of enzymes includes a bacterial fermentation step, but the enzymes themselves are not fermented or hydrolyzed. The comments noted that the final product is purified to remove extraneous materials and claimed that very small amounts of their enzyme products are used in food processing and, therefore, would not present a health risk to patients with celiac disease. Finally, the comments explained that wheat is not used by the enzymes that form the final product and the enzymes do not contain gluten; thus, according to the comments, the enzymes should not be classified as fermented or hydrolyzed, and we should exempt the enzymes from the rule and allow foods produced with the use of such enzymes to bear a ''gluten-free'' claim if the foods meet the ''gluten-free'' definition under § 101.91(a)(3).

(Response 2) The issue of purity and potential carry-over of growth media containing gluten is a valid concern for both the manufacturers and consumers with celiac disease. Wheat may be present in any carried-over nutrient media used to grow the microbes, and the gluten in the media may be subjected to proteolytic digestion (hydrolysis) making its quantity and biological activity hard to confirm using currently available technology. Further, it is likely that these properties will vary with the specific production process (*e.g.,* type of microbe grown, temperature, incubation period, etc.). We agree that the enzymes produced in this manner are not themselves fermented; however, the gluten that may possibly be present in the enzyme may be hydrolyzed due to fermentation. An important consideration is the amount of potential carryover and how much of the enzyme ingredient is used in the production of the final food product. Because these factors may vary

considerably, we decline to exempt enzymes from the rule.

Finally, we disagree with the comments' assertions that, because wheat is not used by the enzymes that form the final product, the enzymes do not contain gluten. Section 101.91(a)(3) requires some means of demonstrating that the final product has been processed to remove gluten to a level below 20 ppm. During the enzyme production process, the microbes make use of wheat in the nutrient medium, and any gluten present, because of the carry-over described in the preceding paragraph, may have undergone alterations, such as protein fragmentation and deamidation, during the bacterial fermentation step. We do not know how these changes affect the immunopathogenicity and other properties of gluten, and it is not clear whether the means of measuring compliance with the 2013 gluten-free food labeling final rule for intact gluten would be sufficient to safeguard consumers with celiac disease. Thus, until this is known, the final rule is needed to help ensure that individuals with celiac disease are not misled and receive truthful and accurate information with respect to fermented or hydrolyzed foods labeled as ''gluten-free.''

(Comment 3) One comment regarding the effects of various processing and treatment technologies noted that it was important to distinguish between those that actually remove gluten and those that modify or cleave the protein molecules without actually removing anything from the food or ingredient. The comment provided an example of production of wheat starch that involves a step in which a protein (gluten)-enriched fraction is physically separated from a protein depleted (potentially gluten-free) starch fraction. In this case, gluten has been removed. When a food or ingredient is treated by fermentation or hydrolysis, it is only possible to state that the gluten has been modified, not removed.

(Response 3) We agree that there is a difference between physical removal and modification (processing) of gluten to generate a product that does not contain any immunopathogenic elements of concern to consumers with celiac disease. When physically removing the gluten, the question is whether all of the gluten has been removed so that there is no trace left that might cause an adverse health event. Modification of the gluten is not definitive unless it is possible to demonstrate that all of the modified gluten or its protein components are no longer harmful for individuals with celiac disease.

2. Innovation in Developing Methods for Fermented, Hydrolyzed, or Distilled Foods

(Comment 4) A few comments stated that a valid method exists to quantify gluten in a product that has been fermented or hydrolyzed, like beer, and pointed to the R5 Competitive ELISA test with inactivated protease enzyme.

(Response 4) When compliance with § 101.91(b) is based on an analysis of the food, FDA will use a scientifically valid method that can reliably detect the presence of 20 ppm gluten in a variety of food matrices, including both raw, cooked, or baked products (§ 101.191(c)). As stated in the 2011 notice and the 2013 gluten-free food labeling final rule, a scientifically valid method for purposes of substantiating a ''gluten-free'' claim for food matrices where formally validated methods (*e.g.,* that underwent a multi-laboratory performance evaluation) do not exist is one that is accurate, precise, and specific for its intended purpose and where the results of the method evaluation are published in the peer-reviewed scientific literature. In other words, a scientifically valid test is one that consistently and reliably does what it is intended to do (76 FR 46671 at 46673; 78 FR 47154 at 47165). The R5 Competitive ELISA test has potential as a quantitative method, and we acknowledge that, under the appropriate test conditions, the R5 Competitive ELISA can generate reproducible results. The commercial R5 Competitive ELISA marketed for the detection of hydrolyzed (or fermented) gluten has, by design, an advantage over sandwich ELISA-based methods by not requiring the presence of two antigenic epitopes (antibody binding sites) to detect the presence of gluten peptides. Further, because the immunopathogenesis associated with celiac disease only requires a single immunopathogenic element, the R5 Competitive ELISA is theoretically more appropriate as an assay.

However, as currently designed, the R5 Competitive ELISA method is not suitable for the detection and quantification of gluten in any fermented or hydrolyzed food (*e.g.,* beer, yogurt). The lack of appropriate reference standards for the detection and quantification of gluten subjected to fermentation or proteolysis (hydrolysis) makes the results generated by the R5 Competitive ELISA difficult, if not impossible, to interpret. As currently supplied, the calibration standard in the R5 Competitive ELISA is allowed to proceed for a specified amount of time at a specific temperature. If the hydrolytic conditions (time, temperature, or composition under which the hydrolysis is occurring) associated with the production of the sample being analyzed were different from those used to make the calibration standards, the peptide profile is likely to be different, and the assay is unlikely to generate accurate results. The Association of Official Analytic Chemists Official Methods of Analysis (AOAC OMA) First Action award to the R5 Competitive ELISA stated that the hydrolyzed gluten being used as a calibration standard may not be suitable, and users should establish their own standards before relying on the calibration standard (Ref. 3). Specifically, minor fluctuations in temperature and time, as well as the specifics of the proteolysis, could result in a different range of peptides, making the calibration standards not suitable.

Further, it is not known how to interpret the immunopathogenicity based on the amount and profile of gluten peptides detected. The threshold of 20 ppm gluten was based on studies examining the immunopathogenicity of intact gluten. Whether the biological activity on a per mg basis is the same for gluten peptides, as was measured with intact proteins, is unknown; the answer may depend on the peptide profile.

Thus, we have concerns regarding the use of the R5 Competitive ELISA in the detection of gluten in fermented or hydrolyzed foods or ingredients because of the challenge in demonstrating that it is suitable for the intended purpose of interpreting the immunopathogenicity based on the amount and profile of gluten peptides detected and whether the method performs reliably (*i.e.,* is a scientifically valid method). While the method may perform reproducibly as indicated by the American Association of Cereal Chemist International (AACCI) validation (Ref. 4), it does not mean that the method is suitable for the intended purpose of detecting and quantifying, with sufficient accuracy, the gluten protein content in fermented and hydrolyzed foods, or assessing the immunopahogenicity or equivalent amount of intact gluten proteins.

Finally, the procedure of adding a controlled amount of an artificially prepared hydrolysate to food as required by the testing protocol (a process called ''spiking'') may give an inaccurate reading because it does not reflect the assay's ability to detect gluten that has been added to the food before processing and hydrolyzed during production. For this reason, it is

important that, whenever possible, methods be validated using gluten that is added to the food before processing. The inability to detect any gluten using the R5 Competitive ELISA (below the limit of detection) is not an indication of complete elimination or even a reduction of gluten. Another complexity is that not all the immunopathogenic sequences of gluten have been identified. Further, the R5 antibody does not recognize all immunopathogenic sequences (*e.g.,* glutenin-derived) and, therefore, gluten could be present in a form that is not detectable (Ref. 5).

(Comment 5) One comment stated that the proposed rule would require gluten to be measured using scientifically valid methods. The comment would have us revise the rule to address the fact that there are many different test methods and that they vary in their ability to provide accurate and precise data. The comment suggested that, instead of requiring that testing labs merely use ''scientifically valid'' test methods, we require that the methods are fully validated, thereby establishing performance reliability (the consistency or reproducibility of the test).

(Response 5) The ideal test method for detecting and quantifying the gluten content of feremented or hydrolyzed foods is a scientifically valid method that is suitable for the intended purpose and has been extensively, preferably multi-laboratory validated. However, multi-laboratory validation is sometimes conducted for conditions that are not suitable for the intended purpose (not scientifically valid). For example, in the R5 Competitive ELISA, which has undergone multi-laboratory validation for use in the quantitative analysis of fermented or hydrolyzed gluten, the calibration standard often does not represent the peptide repertoire being measured and, thereby, is not suitable for fermented or hydrolyzed foods or ingredients. Further, validation should focus on realistic samples. Instead, the R5 Competitive ELISA validation employed a calibration standard to which a controlled amount of substance, as required by protocol, was added into several samples; as such, the recoveries and performance of the assay were not reflective of the analysis of realistic samples. The R5 Competitive ELISA is not the only example of a method that has been promoted for use in an analysis of gluten in fermented or hydrolyzed foods, but it is mentioned here because it has been promoted for use in the quantitative analysis of fermented or hydrolyzed gluten. Although an AOAC Official Method is often a good indicator of reliability (not necessarily 'suitability for purpose' beyond the specifics described in the validation report), there are other organizations, such as the American Society for Testing and Materials (ASTM), that may develop methods that perform reliably and may be appropriate for testing gluten in fermented or hydrolyzed foods.

Other governmental agencies and industry may adopt their own procedures for testing gluten in hydrolyzed and fermented foods as well. The focus should be on using the most appropriate, scientifically valid method that meets the manufacturer's needs. Realizing insufficiencies of existing validation methods, we established our own validation protocols. Our validation protocols focus on the detection and quantification of analytes under realistic conditions (such as using a standard that has been spiked before any food processing instead of simply spiking the standard into the final food product). Once a method has been validated, the method can only be used for a novel food following evaluation and validation of the method performance with the specific food matrix.

(Comment 6) Several comments stated that the proposed rule does not offer flexibility for scientific innovation and, therefore, unintentionally prevents fermented and hydrolyzed foods from benefiting from scientific advancements that are very likely to be achieved. One comment stated that the proposed rule is overly restrictive, shows disregard to competition and innovation, and threatens to stifle the marketplace because it fails to account for new and emerging technologies and scientific developments in this area. Other comments asserted that the rule will limit options for those suffering from gluten-related disorders.

(Response 6) As with all detection methodology, we support efforts to resolve the uncertainty issues associated with quantifying gluten fragments and interpreting results in terms of intact gluten. The preamble to the 2013 gluten-free food labeling final rule (78 FR 47154 at 47169) and this final rule reflect our support in encouraging innovation in how gluten-free products are produced and the development of new analytical methods for detecting the gluten content of foods. Other than our discussion of distillation, where testing for the absence of protein indicates compliance with the use of the term ''gluten-free,'' we deliberately did not specify analytical methods that should be used. We did this because we believe that specifying analytical methods would unnecessarily limit flexibility and possibly deter the development of new and better analytical methods as well as methods for gluten removal. In the preamble to the 2013 gluten-free food labeling final rule (78 FR 47154 at 47169), we stated that we were not specifying analytical methods in the final rule even though we had included a description of two analytical methods that met our needs for the analysis of intact gluten in the 2011 notice that reopened the comment period for the proposed rule for gluten-free food labeling of foods (76 FR 46671 at 46672). In the 2011 notice, we described the methods along with references explaining how the two methods were suitable-for-purpose and were validated. The information in the preamble to the 2013 gluten-free food labeling final rule provided extensive discussion about why we were not specifying analytical methods in order to support the development of new and better technologies and also demonstrate flexibility for foods that are not fermented or hydrolyzed by allowing stakeholders to use the methods most appropriate to fit their needs (78 FR 47154 at 47169).

More importantly, we have written the final rule in a manner that, once we identify that a scientifically valid method, pursuant to § 101.91(c)(1), has been developed that can accurately detect and quantify gluten in some or all fermented or hydrolyzed foods or ingredients, § 101.91(c)(2)–(c)(4) would no longer be applicable for those foods, and it would no longer be necessary for the manufacturer of foods bearing the ''gluten-free'' claim to make and keep the records required under § 101.91(c)(2)–(c)(4) demonstrating adequate assurance that the food meets the ''gluten-free'' definition before fermentation or hydrolysis. Should any new scientifically valid methods be developed that can accurately detect and quantify gluten in fermented and hydrolyzed foods, FDA would determine compliance in accordance with § 101.91(c)(1). (On our own initiative, we have revised § 101.91(c)(1) to state that the scientifically valid method is one that can ''reliably detect and quantify'' the presence of 20 ppm gluten. We added the words ''and quantify'' to clarify that the scientifically valid method needs to do more than detect the presence of gluten.) In addition, should any new scientifically valid methods be developed for fermented or hydrolyzed foods, we expect that we would identify the existence of such methods through guidance or other appropriate means.

Therefore, we disagree with the assertion that the final rule is overly restrictive, adversely affects competition or innovation, or fails to account for emerging technologies.

(Comment 7) One comment asked us to give insight regarding which analytical methods might be of greater utility for verifying absence of protein in distilled foods and ingredients.

(Response 7) We decline to discuss in detail the pros and cons of the various analytical methods available for verifying the absence of protein in distilled food and ingredients because the best method may depend on factors such as food matrix, the experience of the analyst, the business decision of the company, etc. Additionally, a list of methods may be misinterpreted as indicating that we consider other approaches that are not included on the list to be unacceptable or of comparatively less value or usefulness.

3. Distilled Food

(Comment 8) One comment stated that FDA claimed that there is no proof that gluten does not volatilize during the distillation process because the temperatures are not high enough to allow gluten to pass through a still. The comment went on to state that, rather than banning a ''gluten-free'' claim on any product that had not been tested for gluten, FDA should rely on existing science that proves that gluten does not pass through a distillation still and, therefore, would not end up in a distilled product. The comment said that testing every batch is a hardship on small craft and farm distillers and prevents marketing of these kind of products to those with gluten intolerance. The comment also said that we should commission a scientific study to confirm that gluten may be present in distilled spirits or that gluten does not pass through a still and, therefore, all distilled spirits do not contain gluten.

(Response 8) The comment may have misunderstood our position. We did not claim that there is no proof that gluten does not volatilize during the distillation process because the temperatures are not high enough to allow gluten to pass through a still. If good manufacturing practices are followed, the process of distillation must remove all protein (and thus gluten), regardless if the product has been distilled from gluten-containing grains. As discussed further in Response 9, distillation is considered a process to remove gluten and it is unlikely that residual gluten may be present in the final distilled products. Transfer of gluten into the distillate would only be expected to occur under poor manufacturing practices in which the initial material is splashing into the distillate due to poor design of the still. Protein testing can be done to confirm that protein (and thus gluten) is absent in the distilled product. We note that testing of each batch is not required under existing regulations, and this rule specifies the methods we will use to verify compliance for distilled foods in § 101.91(c)(5). In addition, we note that any ingredients (such as flavors) added to the distilled product would need to comply with our regulations defining ''gluten-free'' in § 101.91(a) for the finished product labeling to bear the gluten-free claim.

(Comment 9) A few comments opposed different requirements for distilled foods because, according to the comments, distilled foods have caused reactions in some people and, therefore, are not safe. The comments stated that the exception for distilled foods is in direct conflict with the gluten-free food labeling rule and creates an uneven playing field within the overall alcoholic beverages category. The comments pointed out that malt beverages or other products that have undergone a process to remove or reduce gluten content are not treated the same as distilled spirits.

One comment suggested a tiered labeling system for distilled foods with varying labels (''Gluten-free,'' ''gluten-free'' with a disclaimer, ''gluten-reduced,'' no gluten claim allowed) that allows ''gluten-free'' labeling when testing is possible with the caveat that if the starting material was a gluten-containing grain, a disclaimer is used to disclose this fact. The comment claimed that this tiered labeling standard would provide full disclosure to the consumer, place the burden on industry to provide accurate labeling, and be transparent.

(Response 9) As we explained in the preamble to the proposed rule (80 FR 71990 at 71995, 71999), while creating distilled vinegar does involve fermentation, the process of distillation heats a liquid, which vaporizes components with lower boiling points and separates them from components with higher boiling points. The remaining compounds, whose boiling points are too high to undergo vaporization, are left behind. If distillation is done properly, the process removes gluten because gluten does not vaporize. Therefore, there should not be any gluten remaining in the final distilled product. For this reason, a distilled product labeling may bear a ''gluten-free'' claim and should be safe for people with celiac disease to consume.

We also disagree that the regulations for distilled foods or ingredients is in direct conflict with our regulations defining ''gluten-free.'' Our regulations permit ingredients derived from a gluten-containing grain that has been processed to remove gluten if the use of that ingredient does not result in the presence of 20 ppm or more gluten in the food (§ 101.91(a)(3)(i)(A)(*3*)).

We are aware that the process of distillation is capable of separating gluten and other proteins from the remaining compounds and, therefore, we make this distinction for foods or ingredients that are distilled. Scientifically valid methods for protein testing can determine if a product is free of protein and, therefore, also free of gluten. Thus, we will evaluate compliance by verifying the absence of protein in the distilled component using scientifically valid analytical methods that can reliably detect the presence or absence of protein or protein fragments in the food. Furthermore, we note that malt beverages, as defined under the Federal Alcohol Administration Act (FAA Act) (27 U.S.C. 211(a)(7)), do not undergo distillation and, therefore, would not be subject to § 101.91(c)(5).

As for the comment regarding a tiered labeling system, to be consistent with § 101.91, which defines the term ''gluten-free,'' we decline to introduce a tiered labeling system along with a disclaimer because § 101.91(b)(2) provides for the use of the label claims ''gluten-free,'' ''no gluten,'' ''free of gluten,'' or ''without gluten'' if the product meets the definition under § 101.91(a)(3). Use of any of these terms on products that were made from gluten-containing grains would not meet the definition of ''gluten-free'' in § 101.91(a)(3) and would, therefore, misbrand the products unless the ingredients used to formulate the food have been processed to remove gluten and the final food product contains less than 20 ppm of gluten. We note that this rule does not prohibit other truthful and not misleading labeling statements about the presence or absence of gluten in food products that do not meet a ''gluten-free'' definition, provided the statements do not expressly or implicitly suggest that the food meets FDA's ''gluten-free'' definition.

(Comment 10) One comment stated that we should revise the rule to distinguish between distilled vinegar made from raw material naturally free from gluten and vinegar made from raw material containing gluten. The comment recommended that if the original feedstock is ''gluten-free,'' then no further testing is needed. The comment pointed out that distilled

vinegar is made from distilled ethanol which is further fermented into vinegar by bacteria. Distilled ethanol is generally produced from non-gluten-containing raw material such as corn, beet or sugar cane but in some cases, also gluten-containing cereals. Vinegar itself is not distilled; only the main raw material to make the vinegar is distilled. Therefore, according to the comment, proteins and/or protein fragments may be present due to the use of yeast or yeast extract in the fermentation of distilled vinegar.

Other comments asked us how we plan to distinguish proteins or protein fragments that may originate from the ethanol feedstock from those proteins and protein fragments that may originate from the ethanol fermentation process. The comments stated that such a distinction for any protein detected is important.

(Response 10) As we explained previously in the preamble to the proposed rule (80 FR 71990 at 71995, 71999), distillation is a process capable of separating gluten and other proteins from the remaining compounds and, therefore, we make this distinction for foods or ingredients that are distilled. Due to the distillation process, no protein fragments should be in the ethanol feedstock. Scientifically valid methods for protein testing can determine if a product is free of protein and, therefore, also free of gluten. Only those vinegars made from distilled ethanol that are further processed in a manner to avoid the introduction of gluten can be considered ''gluten-free.'' As for the possible introduction of gluten from those proteins and protein fragments that may originate from the ethanol fermentation process, as with any product, it is the manufacturer's responsibility to implement measures preventing the introduction of gluten into the food elsewhere in the manufacturing process for an ingredient made ''gluten-free'' by distillation. Further, the manufacturer could request from their supplier that the raw materials, such as bacteria or yeast used in the fermentation of distilled vinegar, be ''gluten-free.'' One way this can be accomplished is by avoiding the use of bacteria grown on any gluten-containing source material or by using appropriate testing to confirm that the material (bacteria) are ''gluten-free.'' Thus, the vinegar manufacturer would have assurance that the distilled ethanol was used in a manner that prevented the introduction of gluten into the food during the manufacturing process.

Scientifically valid analytical methods are readily available to detect the presence or absence of protein and protein fragments (and thus gluten) in distilled foods. Therefore, as indicated in § 101.91(c)(5) of this final rule, we will evaluate compliance with § 101.91(b) by verifying the absence of protein in the distilled component using scientifically valid analytical methods that can reliably detect the presence or absence of protein or protein fragments in the food.

4. Different Compliance Standard

(Comment 11) Some comments stated that the rule concludes that fermented or hydrolyzed foods should be subject to a different labeling compliance standard than other foods bearing a ''gluten-free'' claim based upon the assumption that no scientifically valid method will be developed to accurately detect the presence of gluten in these food products.

(Response 11) There is research underway within FDA and elsewhere to develop methods to accurately detect and quantify the presence of gluten in fermented or hydrolyzed foods. However, as we noted in the proposed rule (80 FR 71990 at 71991), although test methods for the detection of gluten fragments in fermented or hydrolyzed foods have advanced, there is still uncertainty in interpreting the results. The currently available test methods are not capable of producing results on a quantitative basis that equate to an equivalent amount of intact gluten, and thus, we are making available alternate means by which these kinds of foods can comply with § 101.91. Once we have identified a scientifically valid method, it would no longer be necessary for the manufacturer of foods bearing the ''gluten-free'' claim to make and keep the records required under § 101.91(c)(2)–(c)(4), and FDA would determine compliance in accordance with § 101.91(c)(1). If or when a scientifically valid method to detect and quantify the presence of gluten in fermented or hydrolyzed foods become available, we will identify this change through a guidance document or other appropriate means. In addition, FDA may consider changing our regulations if warranted.

(Comment 12) Several comments questioned whether fermented or hydrolyzed foods should be subject to a different compliance standard than other foods bearing a ''gluten-free'' claim when there is a high probability that a scientifically valid method will be developed in the very near future to accurately detect the presence of gluten in such foods. The comments suggested that we remove the reference to any particular food that is distilled, fermented, or hydrolyzed in the wording of proposed § 101.91(c)(2) through (c)(5). This would mean that the labeling requirements would apply equally to all food categories for which a scientifically valid method is not available to confirm compliance with the 20 ppm gluten threshold. The comments said this would provide FDA with the necessary compliance authority to impose a higher standard on certain foods where we determine that a valid scientific method does not currently exist. Later, when a scientifically valid analytical method is established, no regulatory amendment process would be required. The comments further explained that the proposed language does not offer any flexibility for scientific innovation in this area and unintentionally prevents this group of foods from ever benefiting from scientific advancements that are likely to be achieved.

(Response 12) When we developed the proposed rule, there were no scientifically valid methods for the purposes of analyzing fermented or hydrolyzed foods to determine compliance with § 101.91. Because, currently, there are no analytical methods to reliably detect and quantify gluten in fermented or hydrolyzed food nor methods to equate test results in terms of intact gluten, we will evaluate compliance of these foods that bear a ''gluten-free'' labeling claim with the 2013 gluten-free food labeling final rule based on records that provide adequate assurance that the foods are ''gluten-free'' before fermentation or hydrolysis. Fermented or hydrolyzed foods are subject to the same labeling compliance standards as any other food that would bear a ''gluten-free'' claim. This final rule describes how manufacturers of fermented or hydrolyzed foods or distilled foods would be able to demonstrate compliance and how FDA will evaluate compliance. For this reason, we decline to remove reference to distilled foods and fermented or hydrolyzed foods from § 101.91(c)(2) through (c)(5). Further, as we noted in Response 6, if or when a scientifically valid method for fermented or hydrolyzed foods becomes available, FDA will identify such a method through a guidance document or other appropriate means. Once FDA identifies such a method, it would no longer be necessary for the manufacturer of foods bearing the ''gluten-free'' claim to make and keep the records required under § 101.91(c)(2) though (c)(4), and FDA would determine compliance with the ''gluten free'' labeling requirements under § 101.91(c)(1).

(Comment 13) One comment stated that the proposed rule appears to

impose a stricter requirement on electronic records related to the gluten-free voluntary labeling standard than the requirements for other food safety records under other regualtions. For example, the comment states that section II.C. of the proposed rule (80 FR 71990 at 71998 through 71999) indicates that electronic records, including electronic signatures, established or maintained to meet the requirements of this rule would be subject to the electronic records and electronic signatures requirements in part 11 (21 CFR part 11). However, the comment states that § 117.305(g), FDA's regulation concerning Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food, establishes that electronic records established or maintained to meet the requirements of part 117 and that meet the definition of electronic records in § 11.3(b)(6), are exempt from the requirements of part 11.

(Response 13) Although the proposed rule indicated that electronic records would need to comply with part 11, we also note that the use of electronic records is voluntary and thus, a paper record system could be used to comply with the proposed recordkeeping requirements. This would give manufacturers the maximum flexibility to use whatever recordkeeping system they find most appropriate (80 FR 71999).

The final rule would allow these records to be kept as original records, as true copies or as electronic records, and manufacturers would have to make the records available to us for inspection and copying, upon request, during an inspection. Records that can be immediately retrieved from another location by electronic means are considered reasonably accessible. Compliance with FDA's regulation concerning Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food in 21 CFR part 117 has no bearing on this rule.

(Comment 14) One comment said that, in the preamble to the proposed rule, but not in the proposed codified language, FDA recognizes that there is a significant difference between fermented or hydrolyzed foods produced from gluten-containing grains and those that are not. According to the comment, proposed § 101.91(c)(2) would require the manufacturer of such foods bearing the claim to make and keep records demonstrating adequate assurance that the fermented or hydrolyzed ingredients are ''gluten-free.'' The comment said that the preamble to the proposed rule stated that ''the types of records that would provide adequate assurance for ingredients with a high likelihood of gluten cross-contact, such as grains and legumes, may vary from those expected for ingredients with a lower likelihood of gluten cross-contact, such as dairy.'' The comment suggested that this can be interpreted as imposing a greater recordkeeping requirement on the ''low likelihood'' foods than is required in part 117, ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food'' (21 CFR part 117) for food safety hazard analysis. In particular, the comment said that, in § 117.130(b)(1), manufacturers only must address hazards that are ''known or reasonably likely.'' The comment said that it would be appropriate to only require records in cases where the potential presence of gluten or gluten-containing grains is ''known or reasonably likely.'' The comment stated that manufacturers should be required to document the information and process used to reach this conclusion but should not be subject to further recordkeeping requirements.

(Response 14) The comment asked that we only require records in cases where the potential presence of gluten or gluten-containing grains is ''known or reasonably likely.'' While the ''known or reasonably likely'' standard is established in part 117 for food safety hazard analysis, this final rule was specifically developed to establish the requirements for the voluntary use of the ''gluten-free'' claim that allows consumers to practice dietary avoidance and benefits individuals suffering from celiac disease. Although we acknowledge that there is a difference in the likelihood of gluten cross-contact in some fermented or hydrolyzed foods, because there is no scientifically valid method to quantify the gluten protein content in fermented or hydrolyzed foods, manufacturers who wish to produce and label such foods as ''gluten-free'' still need to make and keep records, as described in the new requirements of § 101.91(c), to provide adequate assurance of the type of ingredient used is ''gluten-free'' before fermentation or hydrolysis and to address the potential for cross-contact with gluten-containing grains or ingredients. The records for different foods can have different levels of detail needed to demonstrate compliance. As we have noted in section III.A. and elsewhere in this document, the results of current gluten test methods for fermented and hydrolyzed foods do not provide accurate quantitive results sufficient to be suitable for use with fermented or hydrolyzed foods. Thus, to evaluate compliance of such fermented and hydrolyzed foods that bear a ''gluten-free'' claim, we need to rely on records made and kept by the manufacturer providing adequate assurance that the food is ''gluten-free'' in compliance with § 101.91(a)(3) before fermentation or hydrolysis. In addition, this rule requires the manufacturer of fermented or hydrolyzed foods bearing the ''gluten-free'' claim to document that it has adequately evaluated the potential for gluten cross-contact and, if identified, implemented measures to prevent the introduction of gluten into the food during the manufacturing process.

It is, therefore, appropriate and reasonable to impose the recordkeeping requirement established under § 101.91(c)(4) in this final rule for fermented or hydrolyzed foods bearing a ''gluten-free'' claim to substantiate a firm's compliance with § 101.91(a). Therefore, we decline to change the rule as suggested by the comment and have finalized § 101.91(c)(4) without change.

5. ''Gluten-Free'' Labeling of Beer

The Treasury Department's Alcohol and Tobacco Tax and Trade Bureau (TTB) is responsible for the issuance and enforcement of regulations with respect to the labeling of beers that are malt beverages under the FAA Act. Certain other beers that do not meet the definition of a malt beverage under the FAA Act (27 U.S.C. 211(a)(7)) are subject to FDA's labeling requirements. Beer manufacturers whose beers are subject to FDA's labeling requirements and do not meet the ''gluten-free'' definition are not precluded from using other statements on the label, such as a gluten statement consistent with the TTB Revised Interim Policy on Gluten Content Statements in the Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages, about processing of beers to reduce gluten (Ref. 6). However, such statements must be truthful and not misleading in accordance with our general labeling provisions in sections 403(a)(1) and 201(n) of the FD&C Act.

In the preamble to the 2013 gluten-free food labeling final rule (78 FR 47154 at 47166), we said that, under limited circumstances, we would exercise enforcement discretion with respect to the requirements for ''gluten-free'' labeling for FDA-regulated beers that already made a ''gluten-free'' claim before the rule was published and that were: (1) Made from a non-gluten-containing grain; or (2) made from a gluten-containing grain, where the beer

had been subject to processing that the manufacturer had determined would remove gluten. We said that the enforcement discretion pertained only to those beers subject to FDA's labeling requirements that made a ''gluten-free'' claim as of August 5, 2013, pending completion of the rulemaking process with respect to fermented or hydrolyzed products. We also said that any beer manufacturer that wanted to make a new ''gluten-free'' claims should contact FDA regarding the possible expansion of our consideration for the exercise of enforcement discretion related to such labeling. With the publication of this final rule, we complete the gluten-free labeling rulemaking and the enforcement discretion described in the preamble to the 2013 gluten-free food labeling final rule (78 FR 47154 at 47166) is no longer valid.

On February 11, 2014, TTB issued a revised interim policy on gluten content statements in the labeling and advertising of beverages or beers it regulates. The ''Revised Interim Policy on Gluten Content Statements in the Labeling and Advertising of Wines, Distilled Spirits, and Malt Beverages'' allows the use of the following qualifying statement to inform consumers: ''Product fermented from grains containing gluten and [processed or treated or crafted] to remove gluten. The gluten content of this product cannot be verified, and this product may contain gluten,'' or ''This product was distilled from grains containing gluten, which removed some or all of the gluten. The gluten content of this product cannot be verified, and this product may contain gluten.'' (Ref. 6).

We stated in the preamble to the proposed rule (80 FR 71990 at 71994) that, as with other foods, beers made using a gluten-containing grain do not meet the ''gluten-free'' definition. Thus, beers made from gluten-containing grains cannot bear a ''gluten-free'' claim. However, as with other foods, if the gluten-containing grain has been processed to remove gluten (*e.g.,* wheat starch) in accordance with the provisions in the ''gluten-free'' definition before making beer, the beer may be eligible to make the claim.

As far as the claims that beer made from gluten-containing grains can be processed to remove gluten, we are not aware of any scientifically valid way to evaluate such a claim, and there is inadequate evidence concerning the effectiveness of gluten removal processes. We acknowledge that gluten can be at least partially broken down by several processes, including fermentation. However, as we explain in section III.A. of this rule, the presence or absence of gluten broken down in this way cannot be reliably detected with sandwich ELISA-based methods.

In the preamble to the proposed rule (80 FR 71990 at 71994), we requested comments to learn more about the efficacy of competitive ELISA-based methods, given the beer industry's practice of adding enzymes to the beer to prevent the problem of cloudiness or ''haze.'' The enzyme hydrolyzes or breaks down gluten proteins at proline residues. Thus, using these haze control enzymes may generate peptides that are not detectable using the commercially available competitive ELISA-based methods that rely on the presence of proline in the epitopes. As we noted in the preamble to the proposed rule (80 FR 71990 at 71995), it is uncertain that cleavage at proline residues eliminates the concern for people with celiac disease because there may be immunopathogenic protein fragments still present. In other words, we do not know whether the protein fragments can trigger a reaction in people with celiac disease.

In the preamble to the proposed rule, we requested comment, including scientific research, regarding whether beer derived from gluten-containing grains that may still contain protein fragments from gluten can be shown by scientifically valid analytic methods to equate to intact gluten on a quantitative basis (80 FR 71990 at 71995). We also were interested in scientific research regarding how we can use such test methods to determine whether beer derived from gluten-containing grains contains the equivalent of less than 20 ppm intact gluten proteins, including any data and information regarding quantification of gluten fragments and determining appropriate calibration or reference standards. We also invited comment, including data and any information on scientific research and methods, to determine if a specific enzymatic treatment of beer derived from gluten-containing grains can modify proteins or protein fragments such that they are present at levels equivalent to less than 20 ppm intact gluten proteins (80 FR 71990 at 71995).

We received several comments related to these specific questions as well as some other beer-related topics.

(Comment 15) Many comments opposed the use of the terms ''made to remove gluten,'' ''crafted to remove gluten,'' and other similar such terms on beer labels. The comments stated that such terms are not the same as ''gluten-free'' and that consumers may think they are the same, especially because these products are often marketed as ''gluten-free.'' Other comments stated that ''gluten-free'' was not the same as ''gluten-reduced,'' and that products treated to remove gluten should be clearly differentiated from those that are inherently gluten-free.

(Response 15) Our regulations at § 101.91 seek to eliminate confusing and potentially misleading language that might hinder people with celiac disease from properly identifying food safe for consumption. In the preamble to the 2013 gluten-free food labeling final rule (78 FR 47154 at 47164), we explained that, under § 101.91(b)(2), a food that bears the claim ''no gluten,'' ''free of gluten,'' or ''without gluten'' in its labeling and fails to meet the requirements for a ''gluten-free'' claim will be deemed to be misbranded.

Based upon comments that we received during a public meeting on August 19, 2005, to discuss the topic of gluten-free food labeling and comments that were submitted in writing to the related FDA Docket No. FDA–2005–N–0404 (formerly 2005N–0279), we believe that a uniform definition of the term ''gluten-free'' prevents confusion and uncertainty among both consumers and food manufacturers about what this food labeling claim means. Therefore, we have not defined the terms ''gluten-reduced,'' ''crafted to remove gluten,'' or ''made to remove gluten,'' and we do not consider those terms to be equivalent to ''gluten-free.'' Although some products may be labeled with these terms as long as the label is truthful and not misleading (*e.g.,* so as to not imply that they are gluten-free), we reiterate that consumers with celiac disease should rely only on the terms specified in § 101.91(b)(2) to indicate that a food is ''gluten-free'' or safe for them to consume.

This final rule does not change the definition of ''gluten-free,'' but only adds compliance requirements for hydrolyzed, fermented, or distilled foods.

(Comment 16) Several comments stated that it would be appropriate for beers made with gluten-containing grains to be labeled as ''crafted to remove gluten,'' along with a statement that ''the beer is fermented from grains containing gluten and crafted to remove gluten.'' The comments stated that the gluten content of the beer cannot be verified and that a statement that the beer may contain gluten is truthful, accurate, and not misleading and provides the consumer with adequate information to make a purchase decision. The comments said that our proposed rule is too narrow in focus and that TTB's Policy authorizing qualified ''crafted to remove gluten'' claims for fermented alcohol beverages made with

gluten-containing grain ingredients is appropriate. The comments said that our proposal fails to incorporate TTB's Policy requirements or distinguish between the claims that are subject to FDA's gluten-free requirements from TTB's qualified ''crafted to remove gluten'' claim. The comments strongly urged FDA to adopt the TTB Policy authorizing qualified ''crafted to remove gluten'' claims.

(Response 16) As we have noted previously, the statutory directive for this rule was to define the term ''gluten-free,'' and this rulemaking, like the 2013 gluten-free food labeling final rule, is intended to implement that statutory directive. The intent in this rulemaking is to provide an alternative for showing compliance with the ''gluten free'' definition in § 101.91(a)(3) because current analytical methods are not suitable for the quantification of gluten in fermented or hydrolyzed foods (like beer). Thus, beers under our jurisdiction that are made from gluten-containing grains cannot bear a ''gluten-free'' claim. However, as with other foods, if the gluten-containing grain has been processed to remove gluten in accordance with the provisions in the ''gluten-free'' definition before the fermentation process to make beer, the beer may be eligible to make the claim under the final rule.

We do not agree with the comments stating we should adopt TTB's Policy. In the preamble to the proposed rule, we noted that the labeling of beer is subject to oversight by two separate federal agencies (80 FR 71990 at 71995). In addition, we stated that we are working with TTB on the issues associated with ''gluten-free'' labeling of beer to promote consistency in our approach, while taking into consideration the differences in the statutes administered by FDA and TTB, respectively (80 FR 71990 at 71995).

We appreciate the efforts of TTB to provide terminology for products they regulate that do not meet the definition of ''gluten-free,'' and as the proposed rule for gluten-free labeling of fermented or hydrolyzed foods clearly states, and we are reiterating here, FDA-regulated beers are not precluded from using other statements on the label, such as a gluten statement consistent with the TTB Policy (80 FR 71990 at 71995). Such statements must be truthful and not misleading. Beers that do not meet the definition of malt beverage are not subject to the labeling provisions of the FAA Act, but can be subject to the food labeling provisions of the FD&C Act and implementing regulations. This includes the provisions concerning the use of ''gluten-free'' claims, and such statements may not expressly or implicitly suggest to the consumer that the product is ''gluten-free'' when it does not meet the requirements of § 101.91.

(Comment 17) A few comments pointed out that fermented beverages are different from other foods. One comment further stated that prohibiting ''gluten-free'' claims for fermented products that are made with gluten-containing grains, without regard for whether gluten is present in the finished product, would conflict with the policy of the Codex Alimentarius [1] (Codex) on gluten claims. The comment stated that the rule does not provide clarity that fermented alcoholic beverages currently labeled as processed/treated to remove gluten in accordance with the TTB Policy will be permitted to continue being so labeled. Without clear guidance from FDA with respect to the permissibility and standards of such labeling, the comment said that the conditions may exist for potential disparate ''crafted to remove gluten'' standards to arise.

(Response 17) The Codex Standards for ''gluten-free'' labeling (see Codex Standard 118–1979, section 2.1.1b) require that foods labeled as ''gluten-free'' not contain gluten-containing grains unless they have been processed to remove gluten and the end product has less than 20 ppm gluten. Thus, contrary to the comment's assertion, our requirements are aligned with the policy of Codex on gluten claims.

As for fermented or hydrolyzed products, the final rule applies to FDA-regulated foods, including certain beers, and, as we stated in the preamble to the proposed rule, we will work with TTB on the issues associated with the ''gluten-free'' labeling of beer to promote consistency in our approach, while taking into consideration the differences in the statutes administered by FDA and TTB, respectively (80 FR 71990 at 71995). The final rule does not redefine the term ''gluten-free'' or provide for the use of other statements, but rather the rule provides how manufacturers of foods that are fermented or hydrolyzed can comply with § 101.91.

(Comment 18) Some comments stated that the TTB Policy does not protect those with celiac disease and creates a competitive disadvantage for beers that are truly free of gluten (as opposed to having been processed in some manner to reduce gluten). According to the comments, the TTB Policy allows products made from gluten-containing grains to be labeled as being ''processed,'' ''treated,'' or ''crafted'' to remove gluten, along with a qualifying statement indicating that the product's gluten content cannot be determined, and that the product may contain gluten. The comments stated that certain companies are displaying meaningless gluten test results to their consumers. In addition, the comments expressed concern that, if TTB adopted the same approach as our rule, manufacturers will sell low gluten beers as ''gluten-free,'' and consumers will not be able to differentiate between ''gluten-free'' and ''low-gluten'' products.

(Response 18) Although TTB consults with FDA about the issuance of regulations regarding the labeling of ingredients and substances contained in alcohol beverages, as we noted in the preamble to the 2013 gluten-free food labeling final rule (78 FR 47154 at 47165), TTB, and not FDA, is responsible for the issuance and enforcement of regulations with respect to the labeling of beers that are malt beverages under the FAA Act. TTB's Policy states that, ''the term 'gluten-free' may be used on labels and in advertisements if the product would be entitled to make a gluten-free label claim under the standards set forth in the new FDA regulations at 21 CFR 101.91'' (Ref. 6).

We will continue to work with TTB on the issues associated with ''gluten-free'' labeling of beer to promote consistency in terminology to avoid label statements that are either not truthful or are misleading.

(Comment 19) One comment pointed out that proline endopeptidase (PEP) (a yeast derived enzyme used by some manufacturers to selectively degrade the haze-forming peptides and proteins present in beer) provides a suitable and convenient processing aid for preparing ''gluten-free'' barley-based beverages. The comment mentioned research done by Osman et al. 2003 (Ref. 7), which described the gradual degradation of barley proteins during the malting stage where barley glutens were likely to be digested to peptides. The comment also stated that, according to Akeroyd et al. and Panda et al. (Refs. 7 and 8), adding the enzyme during the beer fermentation phase helps to further reduce the modest gluten concentrations present in conventionally brewed beers. More specifically, the enzyme helps in destroying the minimal core sequence required for T-cell recognition. The comment also stated that if a beer shows an ELISA response below the detection level, then the absence of peptides with

[1] The Codex Alimentarius is a collection of internationally recognized standards, codes of practice, guidelines, and other recommendations relating to foods, food production, and food safety. *http://siweb.dss.go.th/standard/Fulltext/codex/CXS_118E.pdf.*

T-cell recognition sites is almost guaranteed. The comment said that, after using the PEP in the brewing of beer, no known immunopathogenic sequence is detected by mass spectrometry and the R5 Competitive ELISA analysis fails to detect any gluten. The comment did, however, acknowledge that a final verification on the absolute quantities of gluten present in the end product remains necessary.

(Response 19) It has been well established that barley glutens are not completely digested to amino acids during the malting and fermentation stage and that the gluten fragments are present in the final beer product (Ref. 8, Ref. 10, Ref. 11). Using mass spectrometry, multiple research groups have detected gluten peptides in conventionally brewed beer and beer brewed in the presence of PEP that has tested negative for an ELISA response because the level of gluten was below the limit of detection of ELISA test kits (Ref. 8, Ref. 9, Ref. 10, Ref. 11). The inability to detect certain known protein fragments in gluten that elicit a response in people with celiac disease does not mean that all possible fragments related to celiac disease are absent because the identities of all possible T-cell epitopes have not been established (Ref. 12). Additionally, Fiedler et al., were able to demonstrate that gluten peptides that contained immunogenic sequences knowns to be associated with celiac disease were detected in PEP-containing beer (Ref. 13). Though it is likely that PEP breaks down gluten, that is not the goal for the use of PEP. Also, the comments acknowledge, there is no scientifically valid analytical method able to quantify the gluten content in terms of equivalent amounts of intact gluten proteins.

We established the use of a 20 ppm limit as one criterion in the definition of ''gluten-free'' because 20 ppm is currently the lowest level at which analytical methods have been scientifically validated to reliably and consistently detect gluten across a range of food matrices, providing a limit for any inadvertent cross-contact with gluten during the manufacturing process. Allowing the ''gluten-free'' label claim on food whose ingredients are derived from a gluten-containing grain and have been processed to remove gluten, but not on food containing such ingredients that have not been processed to remove gluten, helps to ensure that the finished product meets the requirement that the food contain less than 20 ppm. Further, under § 101.91, gluten-containing grains (*e.g.,* wheat, rye, barley) are not to be used in the production of ''gluten-free'' products even if the concentration of gluten in the final product was less than 20 ppm.

6. Issues Outside the Scope of This Rule

Some comments pertained to matters that were outside the scope of this rule. However, we address several of these comments here.

Several comments stated that the term ''gluten-free'' should be reserved only for foods that are inherently ''gluten-free.''

We addressed this issue in the 2013 gluten-free food labeling final rule (78 FR 47154). There may be inherently gluten-free foods or ingredients that still do not meet the definition of ''gluten-free'' due to cross-contact with gluten that leads to gluten content in the food that is at or above 20 ppm. The rule defines ''gluten-free'' to mean the product does not contain a gluten-containing grain or an ingredient derived from a gluten-containing grain unless that ingredient has been processed to remove gluten and the use of that ingredient does not result in the presence of 20 ppm or more gluten in the food. Also, any unavoidable presence of gluten in a product labeled as ''gluten-free'' must be less than 20 ppm. We concluded in the preamble to the 2013 gluten-free food labeling final rule (78 FR 47154 at 47168), that all foods bearing a ''gluten-free'' claim, regardless if they are inherently gluten-free or not, must meet the definition of ''gluten-free.'' We chose not to limit the use of the term to only foods that were inherently gluten-free because such an approach could have the unintended effect of reducing the food choices available for individuals who have celiac disease, thereby reducing the variety of foods needed to meet their nutrient needs.

Other comments asked us to clarify our position on the use of barley malt and barley malt extract in foods bearing a ''gluten-free'' claim.

We note that malt syrup and malt extract are interchangeable terms for a viscous concentrate of a water extract of germinated barley, with or without a preservative. The terms barley malt or barley malt extract are used also. Malt syrup is usually a brown and viscous liquid containing varying amounts of amylolytic enzymes with plant constituents. Malt extract and malt syrup are ingredients derived from a gluten-containing grain, barley, that have not been processed to remove gluten. Food and ingredient manufacturers should be aware that malt extract and other similar malt-derived ingredients are ingredients derived from gluten-containing grains that have not been processed to remove gluten and, therefore, cannot be used in foods that bear ''gluten-free'' labeling.

One comment said that some wheat starch contains small levels of both intact and hydrolyzed gluten and asked us to clarify which methods should be used to test such products because we consider wheat starch to be ''processed to remove gluten.''

We note that wheat starch, when properly manufactured, does not involve hydrolysis of the gluten and can be protein-free. However, as we explain in the preamble to the 2007 proposed rule for gluten-free food labeling, we recognize that there may be different methods of deriving wheat starch, and that some methods may remove less gluten than others (72 FR 2795 at 2802). Therefore, § 101.91(a)(3)(i)(A)(*3*) prohibits a food that contains an ingredient that is derived from a gluten-containing grain and that has been processed to remove gluten (*e.g.,* wheat starch) if the use of that ingredient results in the presence of 20 ppm or more gluten in the food. Manufacturers who label their food as ''gluten-free'' should make certain that the food does not contain 20 ppm or more gluten, regardless of whether or not those foods contain an ingredient that is derived from a gluten containing grain that has been processed to remove gluten. We would expect manufacturers of products that they wish to label as ''gluten-free'' to use good manufacturing practices and be aware of the practices used in production of the ingredients they use in their products. Also, if the processing does involve hydrolysis resulting in hydrolyzed gluten, then the product would be subject to the requirements of this rule.

Finally, one comment asked us to clarify what government entities regulate ''gluten-free'' claim for gluten-reduced beer on restaurant menus and store shelves. We note that TTB is responsible for the labeling requirements for beers, including gluten-reduced beers, that meet the definition of malt beverage in the FAA Act (27 U.S.C. 211(a)(7)). Beers that do not meet the definition of malt beverage are not subject to the labeling provisions of the FAA Act, but are subject to the food labeling provisions of the FD&C Act and implementing regulations, including the provisions concerning the use of ''gluten-free'' or other type of gluten claims. Regarding restaurant menus that bear a ''gluten-free'' claim, we recommend that, for beers subject to the food labeling provisions of the FD&C Act and implementing regulations, restaurants use the defined food labeling

claim ''gluten-free'' to be consistent with our ''gluten-free'' definition.

VI. Effective and Compliance Dates

This rule is effective September 14, 2020. We recognize that manufacturers of fermented or hydrolyzed foods, or foods containing fermented or hydrolyzed ingredients, currently bearing a ''gluten-free'' claim may need time to review their products to ensure that these foods comply with this final rule, or to remove ''gluten- free'' or similar claims from the label if their foods do not comply.

Compliance date: Consequently, the compliance date of this final rule is August 13, 2021.

Although we are issuing the final rule after January 1, 2019, there is sufficient justification for establishing the compliance date of August 13, 2021, to enforce the provisions of this final rule, rather than January 1, 2022, which FDA established as the next uniform compliance date for other food labeling changes for food labeling regulations issued between January 1, 2019, and December 31, 2020 (83 FR 65294; December 20, 2018).

We believe that 12 months from the date of publication is sufficient time for manufacturers to review their products to ensure that these foods comply with this final rule, or to remove ''gluten-free'' or similar claims from the label if their foods do not comply. This period of 12 months is consistent with what FDA has used in the past for compliance with the requirements of voluntary food labeling claims. We believe that waiting until FDA's next uniform compliance date of January 1, 2022, would create an unnecessary delay in the enforcement of this final rule, as foods bearing the voluntary labeling ''gluten-free'' that do not comply with FDA's regulatory definition of ''gluten-free'' could have an adverse public health impact on persons with celiac disease who may be consuming those foods.

Therefore, we are establishing the compliance date to enforce the provisions of this final rule at August 13, 2021.

VII. Economic Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 13771, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all 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, and other advantages; distributive impacts; and equity). Executive Order 13771 requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This final rule is not an economically significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because small firms may have annualized costs that do not exceed one percent of their annual revenue, we certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $156 million, using the most current (2019) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure that meets or exceeds this amount in any year.

The costs of this rule are the costs to manufacturers of covered foods of testing ingredients for gluten, evaluating potential for cross-contact, if necessary developing and carrying out written standard operating procedures (SOPs) for preventing gluten cross-contact, relabeling products that cannot be brought into compliance, and maintaining records of these activities for FDA inspection. We estimate total annualized costs of $7 million to $11 million for the 3% discount rate and annualized costs ranging from $7 million to $11 million at 7% discount rate. All costs are computed in 2018-dollar values.

The benefits of this rule are health gains for people with celiac disease using ''gluten-free'' labeled foods while maintaining a gluten-free diet. To examine the potential scope of these benefits, we simulate the harm done by dietary gluten intake from a gluten-free diet before and after the rule. Due to uncertainty in this simulation analysis, we describe benefits qualitatively. For the rule to break-even with costs, the annualized benefits would need to be at least $8.8 million at a 3% discount rate and a $9.1 million at a 7% discount rate. Based on our simulation analysis, the rule would break-even with primary cost estimates discounted at 7% if at least 0.07% of estimated individuals with celiac disease following a gluten-free diet benefit from the rule each year.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF FINAL RULE

[Millions]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered	
Benefits:							
Annualized Monetized $ millions/year.	.....	.....	.....	2018 2018	7 3	10 10	
Annualized Quantified	.....	.....	.....	.....	7 3		

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF FINAL RULE—Continued

[Millions]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered	
Qualitative	The benefits of this rule are health gains for people with celiac disease using ''gluten-free'' labeled foods while maintaining a gluten-free diet. For the rule to break-even with costs, the annualized benefits would need to be at least $8.8 million at a 3% discount rate and a $9.1 million at a 7% discount rate. Based on our simulation analysis, the rule would break-even with primary cost estimates discounted at 7% if at least 0.07% of estimated individuals with celiac disease following a gluten-free diet benefit from the rule each year.						
Costs:							
Annualized Monetized $millions/year	$9.09	$7.34	$11.46	2018	7	10	
	8.76	7.14	10.94	2018	3	10	
Annualized Quantified Qualitative	.....	.....	.....	.....	7		
					3		
Transfers:							
Federal Annualized Monetized $ millions/year.	.....	.....	.....	.....	7		
					3		
From/To	From:			To:			
Other Annualized Monetized $ millions/year.	.....	.....	.....	.....	7		
					3		
From/To	From:			To:			
Effects:							
State, Local or Tribal Government:							
Small Business:							
Wages:							
Growth:							

In line with Executive Order 13771, in Table 2 we estimate present and annualized values of costs and cost savings over an infinite time horizon based on 2016-dollar values. Based on these costs, this final rule would be considered a regulatory action under E.O. 13771.

TABLE 2—E.O. 13771 SUMMARY TABLE

[In $ millions 2016 dollars, over an infinite time horizon]

Item	Primary estimate (7%)	Lower estimate (7%)	Upper estimate (7%)
Present Value of Costs	$107.12	$89.37	$130.02
Present Value of Cost Savings	0	0	0
Present Value of Net Costs	$107.12	$89.37	$130.02
Annualized Costs	$7.50	$6.26	$9.10
Annualized Cost Savings	0	0	0
Annualized Net Costs	$7.50	$6.26	$9.10

The full analysis of economic impacts is available in the docket for this final rule (Ref. 14) and at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm.*

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). A description of these provisions is given in this section of the document with an estimate of the annual recordkeeping burden. Included in the burden estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Recordkeeping Requirements for Gluten-Free Labeling of Fermented or Hydrolyzed Foods

1. Description of Respondents

Manufacturers of foods that are fermented, hydrolyzed, or contain fermented or hydrolyzed ingredients and bear the claim ''gluten-free,'' ''no gluten,'' ''free of gluten,'' or ''without gluten.''

2. Description

In this final rule, we require manufacturers of certain food products covered by the rule to make and keep records providing adequate assurance that: (1) The food is ''gluten-free'' before fermentation or hydrolysis; (2) the manufacturer has evaluated the potential for cross-contact with gluten during the manufacturing process; and (3) if necessary, measures are in place to prevent the introduction of gluten into the food during the manufacturing process.

Manufacturers using an ingredient that is a fermented or hydrolyzed food are only required to make and keep these records for the fermented or hydrolyzed ingredient. We estimate that the manufacturers can satisfy the recordkeeping requirements of this rule by maintaining records of their tests or other appropriate verification procedures, their evaluation of the potential for gluten cross-contact, and their standard operating procedures (SOPs) for preventing gluten cross-contact. It is also possible that manufacturers can instead comply with this rule by obtaining and maintaining records of Certificates of Analysis (CoA), test results, or other appropriate verification procedures from their suppliers.

Written SOPs and records of testing and other activities are essential for FDA to be able to determine compliance with § 101.91 for these products. Records need to be reasonably accessible at each manufacturing facility and could be examined periodically by FDA inspectors during an inspection to determine whether the food has been manufactured and labeled in compliance with § 101.91. Records that can be immediately retrieved from another location by electronic means are considered reasonably accessible.

We estimate the burden of this collection of information as follows: We base our estimates of the average burden per recordkeeping on our experience with good manufacturing practices used to control the identity and composition of food and to limit contaminants and prevent adulteration. The hour estimates for the recordkeeping burdens presented here are averages. We anticipate that the records kept would vary based on the type of ingredients used. Some manufacturers, such as those producing fermented dairy products, would likely maintain fewer records overall. Other manufacturers, such as those producing foods with fermented or hydrolyzed grains, legumes, or seeds, would likely maintain more extensive records.

Our estimates of the numbers of manufacturers/recordkeepers reported in column 2 of tables 3 and 4 are based on the number of food products that are covered by the rule. Our search of FoodEssentials database was completed in November of 2017 (Ref. 15) for foods that are hydrolyzed, fermented, or contain fermented or hydrolyzed ingredients and bear the labeling claim ''gluten-free,'' ''no gluten,'' ''free of gluten,'' or ''without gluten,'' and found about 2,500 products that are affected by the rule. Based on our understanding of the market and experience with the percentage of the food market covered by this database, we estimate that this database has at least half of all products that are covered by the rule, so that there are likely, at most, 5,000 products affected by the rule.

We do not have any data about how many products are produced in each facility, so we assume that each product and its production line would be tested separately and would require a separate evaluation and SOP. Thus, we estimate the number of food production facilities and, accordingly, the number of manufacturers/recordkeepers to be 5,000. If multiple products are produced in the same facility and can share testing, evaluation, and SOPs, then the recordkeeping burden would be less than these estimates.

We do not know how many products are already being manufactured using gluten-free ingredients and/or with a process designed to prevent gluten introduction. A survey of food industry practices (Ref. 16) shows that about 45 percent of all food production facilities have a written allergen control plan, and about 39 percent require certificates of analysis for ingredients. Given that manufacturers of foods labeled ''gluten-free'' are marketing to customers who care more about gluten cross-contact, we estimate that about 75 percent of the 5,000 foods with a ''gluten-free'' labeling claim already have a written plan for preventing the introduction of gluten into the food product that includes the testing of ingredients and procedures for evaluating and preventing gluten cross-contact. Therefore, we estimate that 1,250 facilities would incur new SOP development and ingredient testing burdens, and all 5,000 facilities would incur certain new recordkeeping burdens.

3. Recordkeeping Burden Related to Standard Operating Procedures

We estimate that 1,250 facilities do not have a written SOP for preventing the introduction of gluten into the food product. For these facilities, developing an SOP is a first year burden of the rule. We estimate that it takes a facility an average of seven hours to develop an SOP for gluten control. Thus, we estimate that in the first year of compliance with this final rule, 1,250 facilities would develop an SOP for a burden of 8,750 hours (1,250 facilities × 7 hours per facility = 8,750 hours), as reported in Table 3, row 1.

Updating the facility's SOP for gluten control would be a recurring burden of the rule for the 1,250 facilities that do not currently have an SOP. We estimate that it takes a facility about 0.7 hours (42 minutes) annually to update its SOP for gluten control, for a burden of 875 hours (1,250 facilities × 0.7 hours per facility = 875 hours), as reported in table 4, row 1.

We estimate that maintaining records of their updated SOPs would be a recurring burden of this rule for all 5,000 facilities. We estimate that it takes each facility one hour annually to maintain records of its updated SOPs for gluten control, for a burden of 5,000 hours (5,000 facilities × 1 hour per facility = 5,000 hours), as reported in table 4, row 2.

4. Recordkeeping Burden Related to Testing

To demonstrate that a food is ''gluten-free'' before fermentation or hydrolysis, we expect that most manufacturers would test their incoming ingredients or obtain Certificates of Analysis from their ingredient suppliers. A manufacturer may test ingredients for gluten by sending ingredient samples to a testing company or by using test kits to test ingredient samples on site at their facility. Test kits would first undergo method validation for the testing situation in which they are to be used (Ref. 17). We assume that a manufacturer that begins a program of testing the gluten content of an ingredient will start by sending several samples to a lab and obtaining method extension for a test kit for the ingredient. Obtaining a validation for a test kit is a first-year burden only for existing products.

After the first year of testing, we assume the manufacturers would then use test kits to test the ingredient on a

regular basis, and may also send one or two samples a year to an outside lab for testing. These are recurring testing burdens. Based on the variety of products under FDA's jurisdiction that are fermented or hydrolyzed, we estimate that an average of two ingredients per product would be tested in this manner. Most foods affected by this rule are those that contain a single fermented or hydrolyzed ingredient. As explained earlier, adequate assurance that these fermented or hydrolyzed ingredient(s) were gluten-free before that supplier performed hydrolysis or fermentation can include test results, CoAs, or other appropriate verification documentation for each of the ingredients. Other products contain multiple ingredients that would be tested before fermentation or hydrolysis.

As described above, we estimate that most manufacturers (75 percent) already have a gluten control SOP that includes testing, so they will not undertake any additional testing as a result of this rule. In the first year of compliance, we estimate that the 1,250 manufacturers not currently testing their ingredients and production facilities for gluten would incur additional testing burdens as a result of this rule. For these manufacturers, obtaining a method extension for a test kit would be a first year burden of this rule. We estimate that 1,250 manufacturers would conduct seven tests for method extension, for each of two ingredients, for a total of 14 samples. We estimate that it would take a manufacturer 5 minutes to collect each sample, for a total of 1,458 hours (1,250 manufacturers × 14 samples per manufacturer × (5 minutes ÷ 60 minutes per hour) = 1,458 hours) as reported in Table 3, row 2. We estimate that this rule results in manufacturers conducting 17,500 laboratory tests in the first year (1,250 manufacturers × 14 samples to be tested per manufacturer = 17,500 samples to be tested). These tests have an average cost of $84.33, which means that the estimated capital costs related to this first year paperwork burden is about $1.5 million (17,500 tests × $84.33 per test = $1,475,833) as reported in table 3, row 2.

We estimate that, as a first year burden of this rule, all 5,000 manufacturers would begin retaining records of the method extension tests. We estimate that it takes a manufacturer 30 minutes per record, for a total of 35,000 hours (5,000 manufacturers × 14 sample records per manufacturer × 0.5 hours per sample record = 35,000 hours), as reported in table 3, row 3.

We estimate that testing ingredients on a regular basis would be a recurring burden of the rule, for the 1,250 manufacturers not currently testing their ingredients and production facilities for gluten. We estimate that 1,250 manufacturers will use 21 test kits annually on average per ingredient, for a total of 42 kits, and that each test will require 5 minutes to collect a sample and 30 minutes to process and file the test results. We estimate that the burden of collecting samples for these tests is 4,375 hours (1,250 manufacturers × 42 test kits per manufacturer × (5 minutes per test kit ÷ 60 minutes per hour) = 4,375 hours), as reported in table 4, row 3. We estimate that this rule, results in manufacturers using 52,500 test kits each year (1,250 manufacturers × 42 test kits per manufacturer = 52,500 test kits). These test kits have an average cost of $11, which means that the estimated capital costs related to this recurring paperwork burden is about $0.6 million (52,500 test kits × $11 per kit = $577,500), as reported in Table 4, row 3. We estimate the burden to process and maintain records of the test results would be 105,000 hours (5,000 manufacturers × 42 test kits per manufacturer × 0.5 hours per test kit = 105,000 hours), as reported in table 4, row 4.

We estimate that a recurring burden of this rule, for all 5,000 manufacturers, is to send one or two samples a year to an outside lab for testing. We estimate that 5,000 manufacturers will conduct one outside test annually on average per ingredient, for a total of 2 tests, and that each test will require 5 minutes to collect a sample and 30 minutes to process and file the test results. We estimate that the burden of collecting samples for these tests is 208 hours (1,250 manufacturers × 2 tests per manufacturer × (5 minutes ÷ 60 minutes per hour) = 208 hours), as reported in table 4, row 5. We estimate that this rule results in manufacturers conducting 2,500 laboratory tests in the first year (1,250 manufacturers × 2 tests per manufacturer = 2,500 tests). These tests have an average cost of $84.33, which means that the estimated capital costs related to this recurring paperwork burden is about $0.2 million (2,500 tests × $84.33 per test = $210,833), as reported in table 4, row 5. We estimate the burden to process and maintain records of the test results is 5,000 hours (5,000 manufacturers × 2 tests per manufacturer × 0.5 hours per test = 5,000 hours), as reported in table 4, row 6.

TABLE 3—ESTIMATED FIRST YEAR RECORDKEEPING BURDEN [1]

Activity/proposed 21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours	Capital costs (USD millions)
Developing an SOP for gluten control; 101.91(c)(2) and (3).	1,250	1	1,250	7	8,750	0
Collecting samples for testing; 101.91(c)(2) and (3).	1,250	14	17,500	0.083 (5 minutes)	1,458	$1.5
Maintaining records of method extension tests; 101.91(c)(2) and (3).	5,000	14	70,000	0.5 (30 minutes)	35,000	0
Total					45,203	$1.5

[1] There are no operating or maintenance costs associated with this collection of information.

TABLE 4—ESTIMATED RECURRING RECORDKEEPING BURDEN [1]

Activity/proposed 21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours	Capital costs (USD millions)
Updating SOP for gluten control; 101.91(c)(2) and (3).	1,250	1	1,250	0.7 (42 minutes)	875	0

TABLE 4—ESTIMATED RECURRING RECORDKEEPING BURDEN [1]—Continued

Activity/proposed 21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours	Capital costs (USD millions)
Maintaining records of the updated SOP for gluten control; 101.91(c)(2) and (3).	5,000	1	5,000	1	5,000	0
Collecting samples for test kit testing; 101.91(c)(2) and (3).	1,250	42	52,500	0.083 (5 minutes)	4,375	$0.6
Maintaining records of test kit test results; 101.91(c)(2) and (3).	5,000	42	210,000	0.5 (30 minutes)	105,000	0
Collecting samples for testing by an outside lab; 101.91(c)(2) and (3).	1,250	2	2,500	0.083 (5 minutes)	208	$0.2
Maintaining records of testing by an outside lab; 101.91(c)(2) and (3).	5,000	2	10,000	0.5 (30 minutes)	5,000	0
Total					120,458	$0.8

[1] There are no operating or maintenance costs associated with this collection of information.

The information collection provisions in this final rule have been submitted to OMB for review as required by section 3507(d) of the Paperwork Reduction Act of 1995.

Before the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. 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.

X. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of Executive Order 13132 requires Agencies to ''construe . . . a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Here, as in the 2013 gluten-free food labeling final rule published in the August 5, 2013, issue of the **Federal Register** (78 FR 47154 at 47175), we have determined that certain narrow exercises of State authority would conflict with the exercise of Federal authority under the FD&C Act.

In section 206 of FALCPA, Congress directed us to issue a proposed rule to define and permit use of the term ''gluten-free'' on the labeling of foods, in consultation with appropriate experts and stakeholders, to be followed by a proposed rule for the use of such term in labeling. In the preamble to the 2007 gluten-free food labeling proposed rule (72 FR 2795 at 2813 through 2814), we indicated that we had consulted with numerous experts and stakeholders in proposed rule's development and determined that certain narrow exercises of State authority would conflict with the exercise of Federal authority under the FD&C Act. Different and inconsistent amounts of gluten in foods with ''gluten-free'' labeling result in the inability of those individuals with celiac disease who adhere to a gluten-free diet to avoid exposure to gluten at levels that may result in adverse health effects. ''Gluten-free'' labeling, for purposes of this discussion, also includes the use of the terms ''no gluten,'' ''free of gluten,'' and without gluten,'' as indicated in § 101.91(b)(2). There is a need for national uniformity in the meaning of the term ''gluten-free,'' which includes the manner in which the definition is enforced, so that most individuals with celiac disease can make informed purchasing decisions that will enable them to adhere to a diet they can tolerate without causing adverse health effects and can select from a variety of available gluten-free foods.

This final rule establishes additional requirements for manufacturers of fermented and hydrolyzed foods or foods that contain fermented and hydrolyzed ingredients wishing to use the terms ''gluten-free,'' ''no gluten,'' ''free of gluten,'' or ''without gluten'' on their products, thus these requirements are a component of how we permit the use of the ''gluten-free'' labeling claim. If States were able to establish different requirements regarding what manufacturers of fermented or hydrolyzed foods would need to demonstrate in order to use the term ''gluten-free,'' then individuals with celiac disease would not be able to rely on a consistent meaning for that term and thereby use the term to identify appropriate dietary selections. As a result, individuals with celiac disease may unnecessarily limit their food choices, or conversely, select foods with levels of gluten that are not tolerated and that may cause adverse health effects. Food manufacturers, if confronted by a State or various State requirements that adopted different requirements for fermented or hydrolyzed foods than this rule, might decide to remove the ''gluten-free'' label, and such a result would make it more difficult for individuals with celiac disease to identify foods that they can tolerate and achieve a dietary intake from a variety of foods to meet an individual's nutrient needs. Moreover, consistent requirements regarding the way compliance with the final rule is determined, including the records that would need to be maintained in order for a fermented or hydrolyzed food manufacturer to use the ''gluten-free'' claim and the use of a scientifically valid method to detect the absence of protein to determine compliance for distilled products, enables us to more efficiently enforce the use of the ''gluten-free'' claim across all fermented and hydrolyzed foods to ensure labels bearing a ''gluten-free'' claim are truthful and not misleading.

Therefore, the final rule's objective is standardizing use of the term ''gluten-free'' in the labeling of fermented and hydrolyzed foods so that foods with this claim in labeling, and foods with a

claim of ''no,'' ''free of,'' and ''without'' gluten, which connote a similar meaning to that of ''gluten-free,'' are used in a consistent way and will prevent consumer confusion and help individuals with celiac disease make purchasing decisions.

Section 4(c) of Executive Order 13132 instructs us to restrict any Federal preemption of State law to the ''minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated.'' The final rule meets the preceding requirement because it would preempt State law narrowly, only to the extent required to achieve uniform national labeling with respect to the requirements related to the use of the term ''gluten-free,'' as well as the terms ''no gluten,'' ''free of gluten,'' or ''without gluten,'' on fermented and hydrolyzed foods. We intend to preempt State or local requirements only to the extent that the State or local requirements are different from the labeling requirements in this section related to the use of the terms ''gluten-free,'' ''no gluten,'' ''free of gluten,'' or ''without gluten'' for fermented and hydrolyzed foods. In addition, we cannot foresee every potential State requirement and preemption that may arise if a State requirement is found to obstruct the federal purpose articulated in this rule. This rule, like the rule codified at § 101.91, is not intended to preempt other State or local labeling requirements with respect to other statements or warnings about gluten. For example, a State is not preempted from requiring a labeling statement about the health effects of gluten consumption from fermented or hydrolyzed foods on persons with celiac disease or information about how the food was processed.

In 2009, the President issued a memorandum entitled ''Preemption'' (74 FR 24693, May 22, 2009). The memorandum, among other things, instructs Agencies to ''not include in regulatory preambles statements that the department or agency intends to preempt State law through the regulation except where preemption provisions are also included in the codified regulation'' and ''not include preemption provisions in codified regulations except where such provisions would be justified under legal principles governing preemption, including the principles outlined in Executive Order 13132.'' Because of the May 22, 2009, memorandum we explain in detail the principles underlying our conclusion that this final rule may result in preemption of State and local laws under a narrow set of circumstances and describe how the final rule's codified provision regarding preemption, which is now § 101.91(d), would apply to fermented or hydrolyzed foods.

Under the Supremacy Clause of the Constitution (U.S. Constitution; Art. VI, clause 2), State laws that interfere with or are contrary to Federal law are invalid. (See *Gibbons* v. *Ogden,* 22 U.S. (9 Wheat.) 1, 211 (1824)). Federal preemption can be express (stated by Congress in the statute) or implied. Implied preemption can occur in several ways. For example, Federal preemption may be found where Federal law conflicts with State law. Such conflict may be demonstrated either when ''compliance with both federal and state [law] is a physical impossibility'' (*Florida Lime and Avocado Growers, Inc.* v. *Paul,* 373 U.S. 132, 142–143 (1963)), or when State law ''stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'' (*Crosby* v. *Nat'l Foreign Trade Council,* 530 U.S. 363, 372–74 (2000) (citing *Hines* v. *Davidowitz,* 312 U.S. 52, 67 (1941))). State law is also preempted if it interferes with the methods by which a Federal law is designed to reach its goals. (See *Int'l Paper Co.* v. *Ouellette,* 479 U.S. 481, 494 (1987); *Michigan Canners & Freezers Ass'n* v. *Agricultural Marketing & Bargaining Bd.,* 467 U.S. 461, 477–478 (1984)).

Additionally, '' 'a federal agency acting within the scope of its congressionally delegated authority may preempt state regulation' and hence render unenforceable state or local laws that are otherwise not inconsistent with federal law'' (*City of New York* v. *FCC,* 486 U.S. 57, 63–64 (1988) (quoting *Louisiana Public Service Comm'n* v. *FCC,* 476 U.S. 355, 369 (1986)). ''Federal regulations have no less preemptive effect than federal statutes'' (*Fidelity Federal Savings and Loan Ass'n* v. *de la Cuesta,* 458 U.S. 141, 153 (1982)).

When an Agency's intent to preempt is clearly and unambiguously stated, a court's inquiry will be whether the preemptive action is within the scope of that Agency's delegated authority (*Capital Cities Cable, Inc.* v. *Crisp,* 467 U.S. 691, 700 (1984); *Fidelity Federal Savings,* 458 U.S. at 154). If the Agency's choice to preempt ''represents a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute [the regulation will stand] unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned'' (*United States* v. *Shimer,* 367 U.S. 374, 383 (1961)). In *Hillsborough County,* the Supreme Court stated that FDA possessed the authority to issue regulations preempting local laws that compromise the supply of plasma and could do so (*Hillsborough County, Fla.* v. *Automated Medical Laboratories, Inc.,* 471 U.S. 707, 721 (1985)). We believe we have similar authority to preempt State and local laws and regulations to the limited extent that they permit use of ''gluten-free,'' ''no gluten,'' ''free of gluten,'' or ''without gluten'' for fermented or hydrolyzed foods differently from our rule because different State or local labeling requirements would be contrary to the Congressional directive for us to define and permit use of the term ''gluten-free.''

State or local laws or regulations that permit use of ''gluten-free,'' ''no gluten,'' ''free of gluten,'' or ''without gluten'' differently from our rule could frustrate the ability of most consumers to identify gluten-free foods and avoid adverse health effects and deter manufacturers from applying a ''gluten-free'' label to their foods. With this final rule, consumers throughout the United States can understand what is required to use the term ''gluten-free'' on the labeling of a fermented or hydrolyzed packaged food. This final rule will also allow us to enforce more efficiently the definition on product labels of fermented or hydrolyzed foods, and manufacturers will be able to comply with a single set of requirements, which may lead to greater use of this voluntary labeling.

Therefore, we intend to preempt State or local requirements only to the extent that they are different from these final requirements related to the use of the terms ''gluten-free,'' ''no gluten,'' ''free of gluten,'' or ''without gluten'' on the labeling of fermented or hydrolyzed foods, including the requirement to make and keep certain records and the use of a scientifically valid method to detect the absence of protein for distilled foods. There is no change to § 101.91(d) regarding preemption, but the new requirements in § 101.91(c) are part of the requirements covered by § 101.91(d).

XI. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction.

Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

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List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

■ 1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 2. In § 101.91, revise paragraphs (b)(1), (b)(2), and (c) to read as follows:

§ 101.91 Gluten-free labeling of food.

* * * * *

(b) *Requirements.* (1) A food that bears the claim ''gluten-free'' in its labeling and fails to meet the requirements of paragraph (a)(3) of this section and, if applicable, paragraphs (c)(2) through (4) of this section will be deemed misbranded.

(2) A food that bears the claim ''no gluten,'' ''free of gluten,'' or ''without gluten'' in its labeling and fails to meet the requirements of paragraph (a)(3) of this section and, if applicable, paragraphs (c)(2) through (4) of this section will be deemed misbranded.

* * * * *

(c) *Compliance.* (1) When compliance with paragraph (b) of this section is based on an analysis of the food, FDA will use a scientifically valid method that can reliably detect and quantify the presence of 20 ppm gluten in a variety of food matrices, including both raw and cooked or baked products.

(2) When a scientifically valid method pursuant to paragraph (c)(1) of this section is not available because the food is fermented or hydrolyzed, the manufacturer of such foods bearing the claim must make and keep records regarding the fermented or hydrolyzed food demonstrating adequate assurance that:

(i) The food is ''gluten-free'' in compliance with paragraph (a)(3) of this section before fermentation or hydrolysis;

(ii) The manufacturer has adequately evaluated their processing for any potential for gluten cross-contact; and

(iii) Where a potential for gluten cross-contact has been identified, the manufacturer has implemented measures to prevent the introduction of gluten into the food during the manufacturing process.

(3) When a scientifically valid method pursuant to paragraph (c)(1) of this section is not available because the food contains one or more ingredients that are fermented or hydrolyzed, the manufacturer of such foods bearing the claim must make and keep records demonstrating adequate assurance that the fermented or hydrolyzed ingredients are ''gluten-free'' as described in paragraph (c)(2) of this section.

(4) Records necessary to verify compliance with paragraphs (c)(2) and (3) of this section must be retained for at least 2 years after introduction or delivery for introduction of the food

into interstate commerce and may be kept as original records, as true copies, or as electronic records. Manufacturers must provide those records to us for examination and copying during an inspection upon request.

(5) When a scientifically valid method pursuant to paragraph (c)(1) of this section is not available because the food is distilled, FDA will evaluate compliance with paragraph (b) of this section by verifying the absence of protein in the distilled component using scientifically valid analytical methods that can reliably detect the presence or absence of protein or protein fragments in the food.

* * * * *

Dated: July 29, 2020.

Stephen M. Hahn,

Commissioner of Food and Drugs.

[FR Doc. 2020–17088 Filed 8–12–20; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0249; FRL–10011–78]

Novaluron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes and modifies tolerances for residues of novaluron in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances and modifications under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 13, 2020. Objections and requests for hearings must be received on or before October 13, 2020 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0249, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Please note that due to the public health emergency, the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0249 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before October 13, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0249, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 30, 2019 (84 FR 45702) (FRL–9998–15), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E8746) by IR–4, IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested to amend 40 CFR 180.598 by establishing tolerances for residues of the insecticide novaluron, including its metabolites and degradates, in or on the following commodities: *Brassica,* leafy greens, subgroup 4–16B at 25 parts per million (ppm); cottonseed subgroup 20C at 0.6 ppm; kohlrabi at 0.7 ppm; sunflower subgroup 20B at 0.07 ppm; tropical and subtropical, small fruit, inedible peel, subgroup 24A at 9 ppm;

and vegetable, *brassica,* head and stem, group 5–16 at 0.7 ppm; and by modifying the existing tolerance on vegetable, fruiting, group 8–10 from 1.0 ppm to 1.5 ppm due to the proposed use on greenhouse grown peppers. The document also requested to remove the established tolerances in or on the following commodities: *Brassica,* head and stem, subgroup 5A at 0.50 ppm; *brassica,* leafy greens, subgroup 5B at 25 ppm; cotton, undelinted seed at 0.60 ppm; and turnip, greens at 25 ppm because these commodities would be covered by the new tolerances established for the crop group expansions and conversions above.

That document referenced a summary of the petition prepared by Makhteshim (d/b/a ADAMA), the registrant, which is available in the docket, *http://www.regulations.gov.* A comment was received in response to the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is establishing and modifying tolerances that vary from what was requested. The reason for these changes is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D) and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for novaluron, including exposure resulting from the tolerances established or modified by this action. EPA's assessment of exposures and risks associated with novaluron follows.

On July 22, 2015, EPA published in the **Federal Register** a final rule establishing tolerances for residues of novaluron in or on multiple agricultural commodities based on the Agency's conclusion that aggregate exposure to novaluron is safe for the general population, including infants and children. *See* 80 FR 43329 (FRL–9929–57). EPA is incorporating the following portions of that document by reference here, as they have not changed in the Agency's current assessment of exposures and risks associated with novaluron: The toxicological profile and points of departure, certain assumptions for exposure assessment, cumulative effects from substances with a common mechanism of toxicity, and the Agency's determination regarding the children's safety factor.

EPA's dietary exposure assessments have been updated to include the additional exposure from the new uses of novaluron on the tropical and subtropical, small fruit, inedible peel, subgroup 24A, the sunflower subgroup 20B, and greenhouse-grown peppers; the crop group expansion for the cottonseed subgroup 20C; and the crop group conversions for *Brassica,* leafy greens, subgroup 4–16B, the vegetable, *Brassica,* head and stem, group 5–16, and kohlrabi. An acute dietary exposure assessment was not performed as there are no appropriate toxicological effects attributable to a single exposure (dose). A partially refined chronic dietary (food and drinking water) exposure and risk assessment was conducted that incorporated tolerance-level residues for the proposed new uses, crop group expansions, and crop group conversions. The chronic analysis also incorporated average percent crop treated (PCT) data for several registered commodities. For the remaining commodities, 100 PCT was assumed. Anticipated residues for meat, milk, hog, and poultry commodities were incorporated as well. A cancer dietary assessment was not conducted because novaluron is classified as ''not likely to be carcinogenic to humans.'' In addition, the chronic dietary exposure and risk assessment incorporated the highest total estimated drinking water concentration of 8.4 parts per billion into this dietary assessment. EPA's aggregate exposure assessment incorporated this additional assumed dietary exposure in food and drinking water and residential exposure for existing uses; the residential exposure assessment has not changed since the 2015 final rule because no new residential uses are being added by this action.

Chronic dietary risks are below the Agency's level of concern of 100% of the chronic population adjusted dose (cPAD); they are estimated to be 50% of the cPAD for children 1 to 2 years old, the population subgroup with the highest exposure estimate. Short- and intermediate-term aggregate (dietary and residential) margins of exposure (MOEs) are 3,400 for adults and 420 for children 1–2 years old, which are not of concern because they are greater than EPA's levels of concern (MOEs less than or equal to 100). There are no anticipated long-term exposures because the pet spot-on use of novaluron was voluntarily cancelled in 2017, so the long-term aggregate assessment is equivalent to the chronic dietary.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to novaluron residues. Further information about EPA's risk assessment and determination of safety supporting the tolerances established and modified in this regulation can be found at *http://www.regulations.gov* in the document titled, ''*Novaluron. Human Health Risk Assessment for Proposed New Uses on Tropical and Subtropical, Small Fruit, Inedible Peel, Subgroup 24A; Sunflower Subgroup 20B; and Greenhouse-Grown Peppers; and Crop Group Expansion for Cottonseed Subgroup 20C, and Crop Group Conversions for Brassica, Leafy Greens, Subgroup 4–16B, Vegetable, Brassica, Head and Stem, Group 5–16, and Kohlrabi*'' dated June 30, 2020 in docket ID number EPA–HQ–OPP–2019–0249.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/electron-capture detection (GC/ECD) and high-performance liquid chromatography/ultraviolet (HPLC/UV)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food

safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex MRLs are established for residues of novaluron in mustard greens (part of the *Brassica,* leafy greens, subgroup 4–16B), the group of *Brassica* vegetables (which includes the commodities in the vegetable, *Brassica,* head and stem, group 5–16 and kohlrabi), and cotton seed (part of the cottonseed subgroup 20C) at the same levels as the U.S. tolerances and are thus harmonized. There are no Codex MRLs for any of the commodities in the tropical and subtropical, small fruit, inedible peel, subgroup 24A or sunflower subgroup 20B and therefore harmonization is not an issue. There are Canadian MRLs at 1 ppm and Codex MRLs at 0.7 ppm for pepper, bell; pepper, non-bell; and tomato, which are the representative commodities in the vegetable, fruiting, group 8–10. Based on the data submitted with this petition, EPA is revising the existing tolerance in/on the vegetable, fruiting, group 8–10 to be 2 ppm. Harmonization with the Canada or Codex MRLs is not possible because lowering the tolerance could cause U.S. growers to have violative residues despite using the pesticide according to the label.

C. Response to Comments

One comment was received in response to the notice of filing that stated in part that ''increasing the tolerance so that more pesticide junk can be on brassica and turnips—that is a very bad idea.''

Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the FFDCA authorizes EPA to establish tolerances when it determines that the tolerance is safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that the novaluron residue tolerances established and modified by this action are safe. The commenter has provided no information supporting a contrary conclusion.

D. Revisions to Petitioned-For Tolerances

The Agency is modifying the tolerance for vegetable, fruiting, group 8–10 to 2 ppm, rather than 1.5 ppm as proposed by the petitioner. The petitioner did not use the Organization for Economic Cooperation and Development (OECD) tolerance calculator and instead estimated the proposed tolerance level. To be conservative, EPA utilized all of the submitted field trial data for greenhouse pepper (which is a representative commodity in the vegetable, fruiting, group 8–10) at the pre-harvest interval (PHI) which gave the highest residue levels, because data showed that residues increased with increasing PHI. These values were input into the OECD calculator.

Also, although the petitioner proposed a 0.6 ppm tolerance for the cottonseed subgroup 20C, the Agency is establishing the tolerance at 0.5 ppm for harmonization with Codex. While the OECD calculator determined a rounded tolerance of 0.6 ppm based on previously submitted cotton field trial data, EPA concludes that a 0.5 ppm tolerance is appropriate because it is based on the following conservative tolerance-setting assumptions: Cottonseed is a blended commodity (therefore, residues are likely to be lower), and field trials are based on maximum application rates (which provides a ''worst-case'' residue level). Furthermore, the OECD calculator provided an unrounded maximum residue limit (MRL) of 0.52 ppm, which is close to 0.5 ppm.

V. Conclusion

Therefore, tolerances are established for residues of novaluron in or on *Brassica,* leafy greens, subgroup 4–16B at 25 ppm; cottonseed subgroup 20C at 0.5 ppm; kohlrabi at 0.7 ppm; sunflower subgroup 20B at 0.07 ppm; tropical and subtropical, small fruit, inedible peel, subgroup 24A at 9 ppm; and vegetable, *Brassica,* head and stem, Group 5–16 at 0.7 ppm. Furthermore, the existing tolerance for vegetable, fruiting, group 8–10 is modified from 1.0 ppm to 2 ppm. Lastly, the following tolerances are removed as unnecessary due to the establishment of the above tolerances: *Brassica,* head and stem, subgroup 5A; *Brassica,* leafy greens, subgroup 5B; cotton, undelinted seed; and turnip greens.

VI. Statutory and Executive Order Reviews

This action establishes and modifies tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances and modifications in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR

67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 16, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons states in the preamble, the EPA amend 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.598, amend the table in paragraph (a) by:

■ a. Removing the entry for ''*Brassica,* head and stem, subgroup 5A'';

■ b. Adding in alphabetical order an entry for ''*Brassica,* leafy greens, subgroup 4–16B'';

■ c. Removing the entries for ''*Brassica,* leafy greens, subgroup 5B'' and ''Cotton, undelinted seed'';

■ d. Adding in alphabetical order entries for ''Cottonseed subgroup 20C,'' ''Kohlrabi,'' ''Sunflower subgroup 20B,'' ''Tropical and subtropical, small fruit, inedible peel, subgroup 24A'';

■ e. Removing the entry for ''Turnip greens'';

■ f. Adding in alphabetical order an entry for ''Vegetable, *Brassica,* head and stem, Group 5–16''; and

■ g. Revising the entry for ''Vegetable, fruiting, group 8–10''.

The additions and revision read as follows:

§ 180.598 Novaluron; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * * * *	
Brassica, leafy greens, subgroup 4–16B	25
* * * * * * *	
Cottonseed subgroup 20C	0.5
* * * * * * *	
Kohlrabi	0.7
* * * * * * *	
Sunflower subgroup 20B	0.07
* * * * * * *	
Tropical and subtropical, small fruit, inedible peel, subgroup 24A	9
Vegetable, *Brassica,* head and stem, Group 5–16	0.7
* * * * * * *	
Vegetable, fruiting, group 8–10	2
* * * * * * *	

* * * * *

[FR Doc. 2020–16457 Filed 8–12–20; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 600

[CMS–2432–FN]

RIN 0938–ZB56

Basic Health Program; Federal Funding Methodology for Program Year 2021

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final methodology.

SUMMARY: This document finalizes the methodology and data sources necessary to determine federal payment amounts to be made for program year 2021 to states that elect to establish a Basic Health Program under the Patient Protection and Affordable Care Act to offer health benefits coverage to low-income individuals otherwise eligible to purchase coverage through Affordable Insurance Exchanges.

DATES: The methodology and data sources announced in this notice are effective on January 1, 2021.

FOR FURTHER INFORMATION CONTACT: Christopher Truffer, (410) 786–1264; or Cassandra Lagorio, (410) 786–4554.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the Basic Health Program

Section 1331 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010) (collectively referred to as the Patient Protection and Affordable Care Act) provides states with an option to establish a Basic Health Program (BHP). In the states that elect to operate a BHP, the BHP will make affordable health benefits coverage available for individuals under age 65 with household incomes between 133 percent and 200 percent of the federal poverty level (FPL) who are not otherwise eligible for Medicaid, the Children's Health Insurance Program (CHIP), or affordable employer-sponsored coverage, or for individuals whose income is below these levels but are lawfully present non-citizens ineligible for Medicaid. For those states that have expanded Medicaid coverage under section 1902(a)(10)(A)(i)(VIII) of the Social Security Act (the Act), the lower income threshold for BHP eligibility is effectively 138 percent due to the application of a required 5 percent income disregard in determining the upper limits of Medicaid income eligibility (section 1902(e)(14)(I) of the Act).

A BHP provides another option for states in providing affordable health benefits to individuals with incomes in the ranges described above. States may find a BHP a useful option for several reasons, including the ability to potentially coordinate standard health plans in the BHP with their Medicaid managed care plans, or to potentially reduce the costs to individuals by lowering premiums or cost-sharing requirements.

Federal funding for a BHP under section 1331(d)(3)(A) of the Patient Protection and Affordable Care Act is based on the amount of premium tax credit (PTC) and cost-sharing reductions (CSRs) that would have been provided for the fiscal year to eligible individuals enrolled in BHP standard health plans in the state if such eligible individuals were allowed to enroll in a qualified health plan (QHP) through Affordable Insurance Exchanges (''Exchanges''). These funds are paid to trusts established by the states and dedicated to the BHP, and the states then administer the payments to standard health plans within the BHP.

In the March 12, 2014 **Federal Register** (79 FR 14112), we published a final rule entitled the ''Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity'' (hereinafter referred to as the BHP final rule) implementing section 1331 of the Patient Protection and Affordable Care Act), which governs the establishment of BHPs. The BHP final rule established the standards for state and federal administration of BHPs, including provisions regarding eligibility and enrollment, benefits, cost-sharing requirements and oversight activities. While the BHP final rule codified the overall statutory requirements and basic procedural framework for the funding methodology, it does not contain the specific information necessary to determine federal payments. We anticipated that the methodology would be based on data and assumptions that would reflect ongoing operations and experience of BHPs, as well as the operation of the Exchanges. For this reason, the BHP final rule indicated that the development and publication of the funding methodology, including any data sources, would be addressed in a separate annual BHP Payment Notice.

In the BHP final rule, we specified that the BHP Payment Notice process would include the annual publication of both a proposed and final BHP Payment Notice. The proposed BHP Payment Notice would be published in the **Federal Register** each October, 2 years prior to the applicable program year, and would describe the proposed funding methodology for the relevant BHP year,[1] including how the Secretary considered the factors specified in section 1331(d)(3) of the Patient Protection and Affordable Care Act, along with the proposed data sources used to determine the federal BHP payment rates for the applicable program year. The final BHP Payment Notice would be published in the **Federal Register** in February, and would include the final BHP funding methodology, as well as the federal BHP payment rates for the applicable BHP program year. For example, payment rates in the final BHP Payment Notice published in February 2015 applied to BHP program year 2016, beginning in January 2016. As discussed in section II.D. of this notice, and as referenced in 42 CFR 600.610(b)(2), state data needed to calculate the federal BHP payment rates for the final BHP Payment Notice must be submitted to CMS.

As described in the BHP final rule, once the final methodology for the applicable program year has been published, we will generally make modifications to the BHP funding methodology on a prospective basis, but with limited exceptions. The BHP final rule provided that retrospective adjustments to the state's BHP payment amount may occur to the extent that the prevailing BHP funding methodology for a given program year permits adjustments to a state's federal BHP payment amount due to insufficient data for prospective determination of the relevant factors specified in the applicable final BHP Payment Notice. For example, the population health factor adjustment described in section III.D.3. of this final notice allows for a retrospective adjustment (at the state's option) to account for the impact that BHP may have had on the risk pool and QHP premiums in the Exchange. Additional adjustments could be made to the payment rates to correct errors in applying the methodology (such as mathematical errors).

Under section 1331(d)(3)(ii) of the Patient Protection and Affordable Care Act, the funding methodology and payment rates are expressed as an amount per eligible individual enrolled in a BHP standard health plan (BHP enrollee) for each month of enrollment. These payment rates may vary based on categories or classes of enrollees. Actual payment to a state would depend on the actual enrollment of individuals found eligible in accordance with a state's certified BHP Blueprint eligibility and verification methodologies in coverage through the state BHP. A state that is approved to implement a BHP must provide data showing quarterly enrollment of eligible individuals in the various federal BHP payment rate cells. Such data must include the following:

- Personal identifier;
- Date of birth;
- County of residence;
- Indian status;
- Family size;
- Household income;
- Number of persons in household enrolled in BHP;
- Family identifier;
- Months of coverage;
- Plan information; and
- Any other data required by CMS to properly calculate the payment.

[1] BHP program years span from January 1 through December 31.

B. The 2018 Final Administrative Order, 2019 Payment Methodology, and 2020 Payment Methodology

On October 11, 2017, the Attorney General of the United States provided the Department of Health and Human Services and the Department of the Treasury with a legal opinion indicating that the permanent appropriation at 31 U.S.C. 1324, from which the Departments had historically drawn funds to make CSR payments, cannot be used to fund CSR payments to insurers. In light of this opinion—and in the absence of any other appropriation that could be used to fund CSR payments—the Department of Health and Human Services directed us to discontinue CSR payments to issuers until Congress provides for an appropriation. In the absence of a Congressional appropriation for federal funding for CSRs, we cannot provide states with a federal payment attributable to CSRs that BHP enrollees would have received had they been enrolled in a QHP through an Exchange.

Starting with the payment for the first quarter (Q1) of 2018 (which began on January 1, 2018), we stopped paying the CSR component of the quarterly BHP payments to New York and Minnesota (the states), the only states operating a BHP in 2018. The states then sued the Secretary for declaratory and injunctive relief in the United States District Court for the Southern District of New York. *See State of New York, et al,* v. *U.S. Department of Health and Human Services,* 18–cv–00683 (S.D.N.Y. filed Jan. 26, 2018). On May 2, 2018, the parties filed a stipulation requesting a stay of the litigation so that HHS could issue an administrative order revising the 2018 BHP payment methodology. As a result of the stipulation, the court dismissed the BHP litigation. On July 6, 2018, we issued a Draft Administrative Order on which New York and Minnesota had an opportunity to comment. Each state submitted comments. We considered the states' comments and issued a Final Administrative Order on August 24, 2018 (Final Administrative Order) setting forth the payment methodology that would apply to the 2018 BHP program year.

In the November 5, 2019 **Federal Register** (84 FR 59529 through 59548) (hereinafter referred to as the November 2019 final BHP Payment Notice), we finalized the payment methodologies for BHP program years 2019 and 2020. The 2019 payment methodology is the same payment methodology described in the Final Administrative Order. The 2020 payment methodology is the same methodology as the 2019 payment methodology with one additional adjustment to account for the impact of individuals selecting different metal tier level plans in the Exchange, referred to as the Metal Tier Selection Factor (MTSF).[2]

II. Summary of the Proposed Provisions and Analysis of and Responses to the Public Comments

The following sections, arranged by subject area, include a summary of the public comments that we received, and our responses. We received 10 public comments from individuals and organizations, including, but not limited to, state Medicaid agencies, other government entities, and advocacy groups. In this section, we outline the proposed provisions and provide a summary of the public comments received and our responses. For a complete and full description of the BHP proposed funding methodology for program year 2021, see the ''Basic Health Program; Federal Funding Methodology for Program Year 2021'' proposed notice published in the February 10, 2020 **Federal Register** (*85 FR 7500*) (hereinafter referred to as the 2021 proposed BHP Payment Notice).

A. Background

In the 2021 proposed BHP Payment Notice, we proposed the methodology for how the federal BHP payments would be calculated for program year 2021.

We received the following comments on the background information included in the 2021 proposed BHP Payment Notice:

Comment: Several commenters were generally supportive of the BHP. Several commenters were generally supportive of the 2021 BHP payment methodology described in the 2021 proposed BHP Payment Notice.

Response: We appreciate the support from these commenters. As described further in this final notice, we have largely adopted the methodology as described in the 2021 proposed BHP Payment Notice.[3]

B. Overview of the Funding Methodology and Calculation of the Payment Amount

We proposed in the overview of the funding methodology to calculate the PTC and CSR as consistently as possible and in general alignment with the methodology used by Exchanges to calculate the advance payments of the PTC (APTC) and CSR, and by the Internal Revenue Service (IRS) to calculate the allowable PTC. We proposed four equations (1, 2a, 2b, and 3) that would, if finalized, compose the overall BHP payment methodology.

We received the following comments on the overview of the funding methodology included in the 2021 proposed BHP Payment Notice:

Comment: One commenter stated that CMS did not have the authority to exclude payment for the CSR portion of the BHP payment rate.

Response: As we explained in the November 2019 final BHP Payment Notice for 2019 and 2020 (84 FR 59530, 59534) and in the 2021 proposed BHP Payment Notice (85 FR 7502), in light of the Attorney General's opinion regarding the unavailability of the permanent appropriation at 31 U.S.C. 1324 to make CSR payments—and in the absence of any other appropriation that could be used to fund CSR payments—HHS directed CMS to discontinue CSR payments to issuers until the Congress provides for an appropriation. In the absence of a Congressional appropriation for federal funding for CSRs, we cannot provide states with a federal payment attributable to CSRs that BHP enrollees would have received had they been enrolled in a QHP through an Exchange.

C. Federal BHP Payment Rate Cells

In this section of 2021 proposed BHP Payment Notice, we proposed that a state implementing BHP provide us with an estimate of the number of BHP enrollees it will enroll in the upcoming BHP program quarter, by applicable rate cell, to determine the federal BHP payment amounts. For each state, we proposed using rate cells that separate the BHP population into separate cells based on the following factors: Age; geographic rating area; coverage status; household size; and income. For specific discussions of these proposals, please refer to the 2021 proposed BHP Payment Notice.

We received no comments on this aspect of the proposed methodology.

[2] ''Metal tiers'' refer to the different actuarial value plan levels offered on the Exchanges. Bronze-level plans generally must provide 60 percent actuarial value; silver-level 70 percent actuarial value; gold-level 80 percent actuarial value; and platinum-level 90 percent actuarial value. See 45 CFR 156.140.

[3] As explained in section II.F. of this final notice, we are finalizing that a state may notify CMS of its election for the 2021 program year to base federal BHP payment rates on actual 2021 premiums or the 2020 premiums trended forward within 60 days of publication of this final notice rather than by the proposed May 15, 2020 deadline. Additionally, as explained in section II.G. of this final notice, we are finalizing that a state may submit its optional health risk adjustment protocol to CMS within 30 days of publication of this final notice rather than by the proposed August 1, 2020 deadline.

Therefore, we are finalizing these policies as proposed.

D. Sources and State Data Considerations

We proposed in this section of the 2021 proposed BHP Payment Notice to use, to the extent possible, data submitted to the federal government by QHP issuers seeking to offer coverage through an Exchange that uses *HealthCare.gov* to determine the federal BHP payment cell rates. However, for states operating a State-based Exchange (SBE) that do not use *HealthCare.gov*, we proposed that such states submit required data for CMS to calculate the federal BHP payment rates in those states. For specific discussions, please refer to the 2021 proposed BHP Payment Notice.

We received no comments on this aspect of the proposed methodology. Therefore, we are finalizing these policies as proposed.

E. Discussion of Specific Variables Used in Payment Equations

In this section of the 2021 proposed BHP Payment Notice, we proposed eight specific variables to use in the payment equations that compose the overall BHP funding methodology. (seven variables are described in section III.D. of this final notice, and the premium trend factor is described in section III.E. of this final notice). For each proposed variable, we included a discussion on the assumptions and data sources used in developing the variables. For specific discussions, please refer to 2021 proposed BHP Payment Notice.

Below is a summary of the public comments we received regarding specific factors and our responses.

Comment: Two commenters recommended that CMS not apply the MTSF in the 2021 BHP payment methodology and offered rationales for CMS to not include the MTSF. One commenter stated that applying the MTSF would be inappropriate because the Essential Plan in New York provides coverage with actuarial value that is equivalent to a platinum plan, not a bronze plan.

One commenter stated that applying the MTSF is inappropriate because the experience in New York in 2015—before BHP was fully implemented—showed that a smaller percentage of enrollees with incomes below 200 percent of FPL chose bronze-level QHPs than the percentage of such enrollees nationwide who chose bronze-level QHPs nationwide in 2017. Two commenters cited New York's enrollment assistance efforts as the reason for a smaller percentage of enrollees choosing bronze-level QHPs in 2015. Further, one commenter noted that the amount of PTC reduction for these enrollees in New York in 2015 was about $12 per enrollee per month.

Response: As detailed in the 2021 proposed BHP Payment Notice and in section III.D.6. of this final notice, we continue to believe that it is appropriate to take the MTSF into account due to several changes that occurred following the discontinuance of the CSR payments that increased the impact of enrollees' plan choices on the amount of PTC paid by the federal government. First, silver-level QHP premiums increased at a higher percentage in comparison to the increase in premiums of other metal-tier plans in many states starting in 2018 (on average, the national average benchmark silver-level QHP premium increased about 17 percentage points faster than the national average lowest-cost bronze-level QHP premium). Second, there was an increase in the percentage of enrollees with incomes below 200 percent of FPL choosing bronze-level QHPs. Third, the likelihood that a person choosing a bronze-level QHP would pay $0 premium also increased, as the difference between the bronze-level QHP premium and the full value of PTC widened. Finally, the average estimated reduction in PTC for enrollees with incomes below 200 percent of FPL that chose bronze-level QHPs increased substantially from 2017 to 2018. Our analysis of 2017 and 2018 data documents these effects.

In 2017, prior to the discontinuance of CSR payments, 11 percent of QHP enrollees with incomes below 200 percent of FPL elected to enroll in bronze-level QHPs, and on average the PTC paid on behalf of those enrollees was 11 percent less than the full value of PTC. In 2018, after the discontinuance of the CSR payments, 13 percent of QHP enrollees with incomes below 200 percent of FPL chose bronze-level QHPs, and on average, the PTC paid on behalf of those enrollees was 23 percent less than the full value of the PTC. In addition, the national average silver-level QHP premium was 17 percent higher than the national average bronze-level plan premium in 2017. In 2018, this ratio increased such that the national average silver-level QHP premium was 33 percent higher than the national average bronze-level plan premium. While the increase in the percentage of QHP enrollees with incomes below 200 percent of FPL who elected to enroll in bronze-level QHPs between 2017 and 2018 is about 2 percentage points, the accompanying percentage reduction of the PTC paid by the federal government for QHP enrollees with incomes below 200 percent of FPL more than doubled between 2017 and 2018. Consistent with section 1331(d)(3) of the Patient Protection and Affordable Care Act, which requires that payments to states be based on what would have been provided if BHP eligible individuals were allowed to enroll in QHPs, we believe it is appropriate to consider how individuals would have chosen different plans—including across metal tiers—as part of the BHP payment methodology. As such, we are finalizing the application of the MTSF for program year 2021 as proposed.

Regarding comments that New York's experience has differed from the national averages, as we discussed in the November 2019 final BHP Payment Notice for 2019 and 2020 (84 FR 59533), we recognize there are certain unique state characteristics in the New York markets (for example, pure community rating); however, the BHP statute directs the Secretary to take into consideration the experience of other states when developing the payment methodology [4] and doing so is a reasonable basis for calculating the MTSF.

We also continue to believe that using 2015 data as the basis for the MTSF is not appropriate. Premiums and enrollment patterns have changed over time, including the above described changes in bronze-level and silver-level QHP premiums, changes in the ratio of the silver-level to bronze-level QHP premiums, and changes to the amount of PTC paid by the federal government. In addition, while the cited 2015 data provides some evidence of consumer plan selections prior to the full implementation of New York's BHP, we do not believe that the 2015 data should be relied upon for the development of the MTSF for the following reasons. First, New York did not begin implementing its BHP until April 2015 (and did not fully implement BHP until 2016). Second, the 2015 data predates the discontinuance of the CSR payments in 2017 and the subsequent adjustments to premiums beginning in 2018 (particularly to silver-level QHP premiums). Therefore, relying on data from 2015 does not capture the more recent experience of New York and/or other states subsequent to the discontinuation of CSRs, which the MTSF is intended to reflect.

In response to comments about New York's enrollment assistance efforts, we note that the statute does not require the Secretary to address every difference in Exchange operations among the states

[4] See section 1331(d)(3)(A)(ii) of the Patient Protection and Affordable Care Act.

(including, but not limited to, enrollment assistance efforts by individual Exchanges). We also believe it is not practicable to address every potential difference in Exchange operations, and that not every potential difference in Exchange operations would be a relevant factor necessary to take into account. In response to the comment that the New York Essential Plan provides coverage with actuarial value that is equivalent to (or greater than) a platinum plan, not a bronze plan, we recognize that BHPs are prohibited from providing bronze-level coverage to enrollees. As we discussed in the November 2019 final BHP Payment Notice for 2019 and 2020 (84 FR 59533), regarding comments that BHPs are prohibited from providing bronze-level coverage to enrollees, and thus the BHP payment methodology should not assume enrollees would have chosen bronze-level QHPs in the Exchange, section 1331(d)(3)(A)(ii) of the Patient Protection and Affordable Care Act directs the Secretary to ''take into account all relevant factors necessary to determine the value of the'' PTCs and CSRs that would have been provided to eligible individuals if they would have enrolled in QHPs through an Exchange. We further note the statute does not set forth an exhaustive list of what those necessary relevant factors are, providing the Secretary with discretion and authority to identify and take into consideration factors that are not specifically enumerated in the statute. In addition, section 1331(d)(3)(A)(ii) of the Patient Protection and Affordable Care Act requires the Secretary to ''take into consideration the experience of other States with respect to participation on Exchanges and such credit and reductions provided to residents of the other States, with a special focus on enrollees with income below 200 percent of poverty.'' We recognize that applying the MTSF would reduce BHP funding, but we nonetheless believe that incorporating the MTSF into the BHP payment methodology for program year 2021 accurately reflects the changes in PTCs after the federal government stopped making CSR payments and is consistent with section 1331(d)(3)(A)(ii) of the Patient Protection and Affordable Care Act. Regarding the comments about the potential impact of reduced BHP funding on benefits available under BHPs, we note that the benefits requirements at § 600.405 are still applicable and therefore benefits available under BHPs should not be impacted.

Comment: Several commenters opposed or disagreed with our alternative options for calculating the MTSF, which included using partial 2019 data instead of 2018 data, and making a retrospective adjustment under § 600.610(c)(2)(ii) to update the MTSF using 2021 data once it becomes available. One commenter noted that calculating the MTSF retrospectively would introduce uncertainty into the program that would make planning difficult.

Response: After consideration of comments, we are finalizing the MTSF as proposed using 2018 data.[5] As detailed in the 2021 proposed BHP Payment Notice, we believe it is reasonable to use the same value for the MTSF as was used in the 2020 final payment methodology. Most notably, the MTSF reflects the percentage of enrollees choosing bronze-level QHPs and the accompanying reduction in the PTCs paid and we do not expect significant year-to-year differences in these data points absent other significant changes to the operations of the Exchanges (for example, the discontinuance of CSR payments). Further, we believe that states and QHP issuers have not significantly changed their approaches to account for the discontinuation of CSR payments, and that most states and QHP issuers are using similar approaches as were used in 2018.[6] We also believe that consumers will continue to react to these adjustments and increases in silver-level QHP premiums in the same manner; meaning that consumers will continue to select bronze-level QHPs and the impact on PTCs paid by the government will generally remain the same.

We appreciate the comments on potential other sources of data beyond 2018 that could be used to calculate the MTSF for 2021. We recognize that making a retrospective adjustment to update the MTSF using 2021 data would introduce some uncertainty into the BHP payments because the necessary data would not be available until after the end of the 2021 program year and this could create planning challenges for states operating BHPs. We also remain concerned about using partial 2019 data to calculate the MTSF, and we believe that the final end-of-year data is more reliable than partial data and that the preliminary 2019 data does not suggest that there would be a substantial change in the MTSF value. We are therefore finalizing the MTSF as proposed using 2018 data, as we discuss in section III.D.6. of this final notice.

Comment: Several commenters opposed or disagreed with our alternative options for calculating the Premium Adjustment Factor (PAF), which included using other data sources to calculate the PAF, estimating the PAF rather than relying on the information from the QHP issuers, and making a retrospective adjustment under § 600.610(c)(2)(ii) to the PAF for 2021 to reflect actual 2021 experience once the necessary data for 2021 becomes available. In addition, one commenter noted that calculating the PAF retrospectively would introduce uncertainty into the program that would make planning difficult.

Response: After consideration of comments received, we are finalizing the PAF value at 1.188 for program year 2021 using 2018 data, as proposed. As detailed in the 2021 proposed BHP Payment Notice, we believe this value for the PAF continues to reasonably account for the increase in silver-level premiums and the reduction in PTCs paid that took effect after the discontinuance of the CSR payments. As explained above, we believe that the impact of the increase in silver-level premiums in 2021 can reasonably be expected to be similar in 2018. In addition, we recognize that making a retrospective adjustment to update the PAF to reflect actual 2021 experience would create some additional uncertainty into the BHP payments because the necessary data would not be available until after the end of the 2021 program year, and that this could create planning challenges for states operating BHPs. We are not pursuing use of the other data sources for determining the value of the PAF, as we believe that QHP issuers may not be readily able to provide specific data. In addition, this information is not typically collected with the issuers' rate filings. We believe this may be burdensome on the QHP issuers to provide this information at this time (for example, through a survey specifically to request this information). We also are not calculating an estimate of the QHP premium adjustment. While we believe this could be a reasonable approach, we believe that the 2018 experience still provides an accurate reflection of the QHP premium adjustment and using 2018 data avoids the previously described concerns associated with the identified potential alternative data sources. We are

[5] See section III.D.6. of this final notice for further details on the MTSF finalized as part of the 2021 final payment methodology.

[6] In fact, HHS may not take any action or prohibit or otherwise restrict silver loading practices with respect to plan year 2021. See Further Consolidated Appropriations Act, 2020, Division N, title I, subtitle F, section 609 (Pub. L. 116–94: December 20, 2019, enacting H.R. 1865).

finalizing the PAF as proposed, as discussed in section III.D.2. of this final notice.

Comment: Regarding the income reconciliation factor (IRF), several commenters supported our proposal to calculate the IRF using only the value for states that have expanded Medicaid eligibility to 138 percent of FPL. In past years, we calculated the IRF as the average of the values for states that have expanded Medicaid eligibility and for states that have not.

Response: We appreciate these comments and are finalizing the IRF as proposed.

F. State Option To Use Prior Program Year QHP Premiums for BHP Payments

In this section of the 2021 proposed payment notice, we proposed to provide states operating a BHP with the option to use the 2020 QHP premiums multiplied by a premium trend factor to calculate the federal BHP payment rates instead of using the 2021 QHP premiums. We proposed to require states to make their election for the 2021 program year by May 15, 2020. For specific discussions, please refer to the 2021 proposed BHP Payment Notice.

We received no comments on this aspect of the proposed methodology. We are finalizing these policies as proposed, with one exception.

Because we are finalizing the 2021 payment methodology after the proposed May 15, 2020 deadline for notifying us of the decision to base federal BHP payment rates on actual 2021 premiums or the 2020 premiums trended forward, we are finalizing that a state may notify CMS of its election within 60 days of publication of this final notice.

G. State Option To Include Retrospective State-Specific Health Risk Adjustment in Certified Methodology

In this section of the 2021 proposed BHP Payment Notice, we proposed to provide states implementing BHP the option to develop a methodology to account for the impact that including the BHP population in the Exchange would have had on QHP premiums based on any differences in health status between the BHP population and persons enrolled through the Exchange. For specific discussions, please refer to the 2021 proposed BHP Payment Notice.

We received no comments on this aspect of the methodology. Therefore, we are finalizing this policy as proposed, with one change. Because we are finalizing the 2021 payment methodology after the proposed August 1, 2020 deadline for states to submit their protocols to CMS, we are finalizing that a state electing this option must submit their protocol to CMS within 30 days of publication of this final notice.

III. Provisions of the 2021 BHP Final Methodology

A. Overview of the Funding Methodology and Calculation of the Payment Amount

Section 1331(d)(3) of the Patient Protection and Affordable Care Act directs the Secretary to consider several factors when determining the federal BHP payment amount, which, as specified in the statute, must equal 95 percent of the value of the PTC and CSRs that BHP enrollees would have been provided had they enrolled in a QHP through an Exchange. Thus, the BHP funding methodology is designed to calculate the PTC and CSRs as consistently as possible and in general alignment with the methodology used by Exchanges to calculate the APTC and CSRs, and by the IRS to calculate final PTCs. In general, we have relied on values for factors in the payment methodology specified in statute or other regulations as available, and have developed values for other factors not otherwise specified in statute, or previously calculated in other regulations, to simulate the values of the PTC and CSRs that BHP enrollees would have received if they had enrolled in QHPs offered through an Exchange. In accordance with section 1331(d)(3)(A)(iii) of the Patient Protection and Affordable Care Act, the final funding methodology must be certified by the Chief Actuary of CMS, in consultation with the Office of Tax Analysis (OTA) of the Department of the Treasury, as having met the requirements of section 1331(d)(3)(A)(ii) of the Patient Protection and Affordable Care Act.

Section 1331(d)(3)(A)(ii) of the Patient Protection and Affordable Care Act specifies that the payment determination shall take into account all relevant factors necessary to determine the value of the PTCs and CSRs that would have been provided to eligible individuals, including but not limited to, the age and income of the enrollee, whether the enrollment is for self-only or family coverage, geographic differences in average spending for health care across rating areas, the health status of the enrollee for purposes of determining risk adjustment payments and reinsurance payments that would have been made if the enrollee had enrolled in a QHP through an Exchange, and whether any reconciliation of PTC and CSR would have occurred if the enrollee had been so enrolled. Under the payment methodologies for 2015 (79 FR 13887) (published in March 2014), for 2016 (80 FR 9636) (published in February 2015), for 2017 and 2018 (81 FR 10091) (published in February 2016), and for 2019 and 2020 (84 FR 59529) (published in November 2019), the total federal BHP payment amount has been calculated using multiple rate cells in each state. Each rate cell represents a unique combination of age range (if applicable), geographic area, coverage category (for example, self-only or two-adult coverage through the BHP), household size, and income range as a percentage of FPL, and there is a distinct rate cell for individuals in each coverage category within a particular age range who reside in a specific geographic area and are in households of the same size and income range. The BHP payment rates developed also are consistent with the state's rules on age rating. Thus, in the case of a state that does not use age as a rating factor on an Exchange, the BHP payment rates would not vary by age.

The rate for each rate cell is calculated in two parts. The first part is equal to 95 percent of the estimated PTC that would have been paid if a BHP enrollee in that rate cell had instead enrolled in a QHP in an Exchange. The second part is equal to 95 percent of the estimated CSR payment that would have been made if a BHP enrollee in that rate cell had instead enrolled in a QHP in an Exchange. These two parts are added together and the total rate for that rate cell would be equal to the sum of the PTC and CSR rates. We will assign a value of zero to the CSR portion of the BHP payment rate calculation, because there is presently no available appropriation from which we can make the CSR portion of any BHP Payment.

Equation (1) will be used to calculate the estimated PTC for eligible individuals enrolled in the BHP in each rate cell. We note that throughout this final notice that when we refer to enrollees and enrollment data, we mean data regarding individuals who were enrolled in the BHP who had been found eligible for the BHP using the eligibility and verification requirements that are applicable in the state's most recent certified Blueprint. By applying the equations separately to rate cells based on age (if applicable), income and other factors, we effectively take those factors into account in the calculation. In addition, the equations reflect the estimated experience of individuals in each rate cell if enrolled in coverage through an Exchange, taking into account additional relevant variables. Each of the variables in the equations is

defined in this section, and further detail is provided later in this section of the final notice. In addition, we described how we will calculate the adjusted reference premium (ARP) that was used in Equation (1) and defined in Equation (2a) and Equation (2b).

Equation 1: Estimated PTC by Rate Cell

The estimated PTC, on a per enrollee basis, will be calculated for each rate cell for each state based on age range (if applicable), geographic area, coverage category, household size, and income range. The PTC portion of the rate will be calculated in a manner consistent with the methodology used to calculate the PTC for persons enrolled in a QHP, with 5 adjustments. First, the PTC portion of the rate for each rate cell will represent the mean, or average, expected PTC that all persons in the rate cell would receive, rather than being calculated for each individual enrollee. Second, the reference premium (RP) (described in section III.D.1. of this final notice) used to calculate the PTC will be adjusted for the BHP population health status, and in the case of a state that elects to use 2020 premiums for the basis of the BHP federal payment, for the projected change in the premium from 2020 to 2021, to which the rates in this final payment methodology will apply. These adjustments are described in Equation (2a) and Equation (2b). Third, the PTC will be adjusted prospectively to reflect the mean, or average, net expected impact of income reconciliation on the combination of all persons enrolled in the BHP; this adjustment, the IRF, as described in section III.D.7. of this final notice, will account for the impact on the PTC that would have occurred had such reconciliation been performed. Fourth, the PTC will be adjusted to account for the estimated impacts of plan selection; this adjustment, the MTSF, would reflect the effect of individuals choosing different metal tier levels of QHPs on the average PTC. Finally, the rate is multiplied by 95 percent, consistent with section 1331(d)(3)(A)(i) of the Patient Protection and Affordable Care Act. We note that in the situation where the average income contribution of an enrollee would exceed the ARP, we will calculate the PTC to be equal to 0 and would not allow the value of the PTC to be negative.

We will use Equation (1) to calculate the PTC rate, consistent with the methodology described above:

$$\textbf{Equation (1)}:\ PTC_{a,g,c,h,i} = \left[ARP_{a,g,c} - \frac{\sum_j I_{h,i,j} \times PTCF_{h,i,j}}{n}\right] \times IRF \times MTSF \times 95\%$$

$PTC_{a,g,c,h,i}$ = Premium tax credit portion of BHP payment rate
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
h = Household size
i = Income range (as percentage of FPL)
$ARP_{a,g,c}$ = Adjusted reference premium
$I_{h,i,j}$ = Income (in dollars per month) at each 1 percentage-point increment of FPL
j = j^{th} percentage-point increment FPL
n = Number of income increments used to calculate the mean PTC
$PTCF_{h,i,j}$ = Premium tax credit formula percentage
IRF = Income reconciliation factor
$MTSF$ = Metal-tier selection factor

Equation (2a) and Equation (2b): Adjusted Reference Premium (ARP) Variable (Used in Equation 1)

As part of the calculations for the PTC component, we will calculate the value of the ARP as described below. Consistent with the existing approach, we will allow states to choose between using the actual current year premiums or the prior year's premiums multiplied by the premium trend factor (PTF) (as described in section III.E. of this final notice). Below we describe how we will continue to calculate the ARP under each option.

In the case of a state that elected to use the reference premium (RP) based on the current program year (for example, 2021 premiums for the 2021 program year), we will calculate the value of the ARP as specified in Equation (2a). The ARP will be equal to the RP, which will be based on the second lowest cost silver plan premium in the applicable program year, multiplied by the BHP population health factor (PHF) (described in section III.D.3. of this final notice), which will reflect the projected impact that enrolling BHP-eligible individuals in QHPs through an Exchange would have had on the average QHP premium, and multiplied by the premium adjustment factor (PAF) (described in section III.D.2. of this final notice), which will account for the change in silver-level premiums due to the discontinuance of CSR payments.

$$\textbf{Equation (2a)}:\ ARP_{a,g,c} = RP_{a,g,c} \times PHF \times PAF$$

$ARP_{a,g,c}$ = Adjusted reference premium
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
$RP_{a,g,c}$ = Reference premium
PHF = Population health factor
PAF = Premium adjustment factor

In the case of a state that elected to use the RP based on the prior program year (for example, 2020 premiums for the 2021 program year, as described in more detail in section III.E. of this final notice), we will calculate the value of the ARP as specified in Equation (2b). The ARP will be equal to the RP, which will be based on the second lowest cost silver plan premium in 2020, multiplied by the BHP PHF (described in section III.D.3. of this final notice), which will reflect the projected impact that enrolling BHP-eligible individuals in QHPs on an Exchange would have had on the average QHP premium, multiplied by the PAF (described in section III.D.2. of this final notice), which will account for the change in silver-level premiums due to the discontinuance of CSR payments, and multiplied by the premium trend factor (PTF) (described in section III.E. of this final notice), which will reflect the projected change in the premium level between 2020 and 2021.

$$\textbf{Equation (2b)}: ARP_{a,g,c} = RP_{a,g,c} \times PHF \times PAF \times PTF$$

$ARP_{a,g,c}$ = Adjusted reference premium
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
$RP_{a,g,c}$ = Reference premium
PHF = Population health factor
PAF = Premium adjustment factor
PTF = Premium trend factor

Equation 3: Determination of Total Monthly Payment for BHP Enrollees in Each Rate Cell

In general, the rate for each rate cell will be multiplied by the number of BHP enrollees in that cell (that is, the number of enrollees that meet the criteria for each rate cell) to calculate the total monthly BHP payment. This calculation is shown in Equation (3).

$$\textbf{Equation (3)}: PMT = \sum \left[(PTC_{a,g,c,h,i} + CSR_{a,g,c,h,i}) \times E_{a,g,c,h,i} \right]$$

In general, the rate for each rate cell will be multiplied by the number of BHP enrollees in that cell (that is, the number of enrollees that meet the criteria for each rate cell) to calculate the total monthly BHP payment. This calculation is shown in Equation (3).

PMT = Total monthly BHP payment
$PTC_{a,g,c,h,i}$ = Premium tax credit portion of BHP payment rate
$CSR_{a,g,c,h,i}$ = Cost-sharing reduction portion of BHP payment rate
$E_{a,g,c,h,i}$ = Number of BHP enrollees
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
h = Household size
i = Income range (as percentage of FPL)

B. Federal BHP Payment Rate Cells

Consistent with the previous payment methodologies, a state implementing a BHP will provide us an estimate of the number of BHP enrollees it projects will enroll in the upcoming BHP program quarter, by applicable rate cell, prior to the first quarter and each subsequent quarter of program operations until actual enrollment data is available. Upon our approval of such estimates as reasonable, they will be used to calculate the prospective payment for the first and subsequent quarters of program operation until the state has provided us actual enrollment data. These data are required to calculate the final BHP payment amount, and make any necessary reconciliation adjustments to the prior quarters' prospective payment amounts due to differences between projected and actual enrollment. Subsequent quarterly deposits to the state's trust fund will be based on the most recent actual enrollment data submitted to us. Actual enrollment data must be based on individuals enrolled for the quarter who the state found eligible and whose eligibility was verified using eligibility and verification requirements as agreed to by the state in its applicable BHP Blueprint for the quarter that enrollment data is submitted. Procedures will ensure that federal payments to a state reflect actual BHP enrollment during a year, within each applicable category, and prospectively determined federal payment rates for each category of BHP enrollment, with such categories defined in terms of age range (if applicable), geographic area, coverage status, household size, and income range, as explained above.

We will require the use of certain rate cells as part of the proposed methodology. For each state, we will use rate cells that separate the BHP population into separate cells based on the five factors described as follows:

Factor 1—Age: We will separate enrollees into rate cells by age (if applicable), using the following age ranges that capture the widest variations in premiums under HHS' Default Age Curve:[7]

- Ages 0–20.
- Ages 21–34.
- Ages 35–44.
- Ages 45–54.
- Ages 55–64.

This provision is unchanged from the current methodology.

Factor 2—Geographic area: For each state, we will separate enrollees into rate cells by geographic areas within which a single RP is charged by QHPs offered through the state's Exchange. Multiple, non-contiguous geographic areas would be incorporated within a single cell, so long as those areas share a common RP.[8] This provision is also unchanged from the current methodology.

Factor 3—Coverage status: We will separate enrollees into rate cells by coverage status, reflecting whether an individual is enrolled in self-only coverage or persons are enrolled in family coverage through the BHP, as provided in section 1331(d)(3)(A)(ii) of the Patient Protection and Affordable Care Act. Among recipients of family coverage through the BHP, separate rate cells, as explained below, will apply based on whether such coverage involves two adults alone or whether it involves children. This provision is unchanged from the current methodology.

Factor 4—Household size: We will continue the current methods for separating enrollees into rate cells by household size that states use to determine BHP enrollees' household income as a percentage of the FPL under § 600.320 (Determination of eligibility for and enrollment in a standard health plan). We will require separate rate cells for several specific household sizes. For each additional member above the largest specified size, we will publish

[7] This curve is used to implement the Patient Protection and Affordable Care Act's 3:1 limit on age-rating in states that do not create an alternative rate structure to comply with that limit. The curve applies to all individual market plans, both within and outside the Exchange. The age bands capture the principal allowed age-based variations in premiums as permitted by this curve. The default age curve was updated for 2018 to include different age rating factors between children 0–14 and for persons at each age between 15 and 20. More information is available at *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Downloads/StateSpecAgeCrv053117.pdf.* Both children and adults under age 21 are charged the same premium. For adults age 21–64, the age bands in this notice divide the total age-based premium variation into the three most equally-sized ranges (defining size by the ratio between the highest and lowest premiums within the band) that are consistent with the age-bands used for risk-adjustment purposes in the HHS-Developed Risk Adjustment Model. For such age bands, see Table 5, ''Age-Sex Variables,'' in HHS-Developed Risk Adjustment Model Algorithm Software, June 2, 2014, *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/ra-tables-03-27-2014.xlsx.*

[8] For example, a cell within a particular state might refer to ''County Group 1,'' ''County Group 2,'' etc., and a table for the state would list all the counties included in each such group. These geographic areas are consistent with the geographic areas established under the 2014 Market Reform Rules. They also reflect the service area requirements applicable to QHPs, as described in 45 CFR 155.1055, except that service areas smaller than counties are addressed as explained in this notice.

instructions for how we will develop additional rate cells and calculate an appropriate payment rate based on data for the rate cell with the closest specified household size. We will publish separate rate cells for household sizes of 1 through 10. This provision is unchanged from the current methodology.

Factor 5—Household Income: For households of each applicable size, we will continue the current methods for creating separate rate cells by income range, as a percentage of FPL. The PTC that a person would receive if enrolled in a QHP through an Exchange varies by household income, both in level and as a ratio to the FPL. Thus, separate rate cells will be used to calculate federal BHP payment rates to reflect different bands of income measured as a percentage of FPL. We will use the following income ranges, measured as a percentage of the FPL:

- 0 to 50 percent of the FPL.
- 51 to 100 percent of the FPL.
- 101 to 138 percent of the FPL.[9]
- 139 to 150 percent of the FPL.
- 151 to 175 percent of the FPL.
- 176 to 200 percent of the FPL.

This provision is unchanged from the current methodology.

These rate cells will only be used to calculate the federal BHP payment amount. A state implementing a BHP will not be required to use these rate cells or any of the factors in these rate cells as part of the state payment to the standard health plans participating in the BHP or to help define BHP enrollees' covered benefits, premium costs, or out-of-pocket cost-sharing levels.

We will use averages to define federal payment rates, both for income ranges and age ranges (if applicable), rather than varying such rates to correspond to each individual BHP enrollee's age and income level. This approach will increase the administrative feasibility of making federal BHP payments and reduce the likelihood of inadvertently erroneous payments resulting from highly complex methodologies. This approach should not significantly change federal payment amounts, since within applicable ranges, the BHP-eligible population is distributed relatively evenly.

The number of factors contributing to rate cells, when combined, can result in over 350,000 rate cells which can increase the complexity when generating quarterly payment amounts. In future years, and in the interest of administrative simplification, we will consider whether to combine or eliminate certain rate cells, once we are certain that the effect on payment would be insignificant.

C. Sources and State Data Considerations

To the extent possible, unless otherwise provided, we will continue to use data submitted to the federal government by QHP issuers seeking to offer coverage through the Exchange in the relevant BHP state to perform the calculations that determine federal BHP payment cell rates.

States operating a SBE in the individual market, however, must provide certain data, including premiums for second lowest cost silver plans, by geographic area, for CMS to calculate the federal BHP payment rates in those states. States operating a SBE interested in obtaining the applicable 2021 program year federal BHP payment rates for its state must submit such data accurately, completely, and as specified by CMS, by no later than October 15, 2020. If additional state data (that is, in addition to the second lowest cost silver plan premium data) are needed to determine the federal BHP payment rate, such data must be submitted in a timely manner, and in a format specified by us to support the development and timely release of annual BHP payment notices. The specifications for data collection to support the development of BHP payment rates are published in CMS guidance and are available in the Federal Policy Guidance section at *https://www.medicaid.gov/federal-policy-Guidance/index.html.*

States operating a BHP must submit enrollment data to us on a quarterly basis and should be technologically prepared to begin submitting data at the start of their BHP, starting with the beginning of the first program year. This differs from the enrollment estimates used to calculate the initial BHP payment, which states would generally submit to CMS 60 days before the start of the first quarter of the program start date. This requirement is necessary for us to implement the payment methodology that is tied to a quarterly reconciliation based on actual enrollment data.

We will continue the policy first adopted in the February 2016 payment notice that in states that have BHP enrollees who do not file federal tax returns (non-filers), the state must develop a methodology to determine the enrollees' household income and household size consistently with Marketplace requirements.[10] The state must submit this methodology to us at the time of their Blueprint submission. We reserve the right to approve or disapprove the state's methodology to determine household income and household size for non-filers if the household composition and/or household income resulting from application of the methodology are different than what typically would be expected to result if the individual or head of household in the family were to file a tax return. States currently operating a BHP that wish to change the methodology for non-filers must submit a revised Blueprint outlining the revisions to its methodology, consistent with § 600.125.

In addition, as the federal payments are determined quarterly and the enrollment data is required to be submitted by the states to us quarterly, the quarterly payment will be based on the characteristics of the enrollee at the beginning of the quarter (or their first month of enrollment in the BHP in each quarter). Thus, if an enrollee were to experience a change in county of residence, household income, household size, or other factors related to the BHP payment determination during the quarter, the payment for the quarter would be based on the data as of the beginning of the quarter (or their first month of enrollment in the BHP in the applicable quarter). Payments will still be made only for months that the person is enrolled in and eligible for the BHP. We do not anticipate that this would have a significant effect on the federal BHP payment. The states must maintain data that are consistent with CMS' verification requirements, including auditable records for each individual enrolled, indicating an eligibility determination and a determination of income and other criteria relevant to the payment methodology as of the beginning of each quarter.

Consistent with § 600.610 (Secretarial determination of BHP payment amount), the state is required to submit certain data in accordance with this notice. We require that this data be collected and validated by states operating a BHP, and that this data be submitted to CMS.

D. Discussion of Specific Variables Used in Payment Equations

1. Reference Premium (RP)

To calculate the estimated PTC that would be paid if BHP-eligible individuals enrolled in QHPs through an Exchange, we must calculate a RP

[9] The three lowest income ranges would be limited to lawfully present immigrants who are ineligible for Medicaid because of immigration status.

[10] See 81 FR at 10097.

because the PTC is based, in part, on the premiums for the applicable second lowest cost silver plan as explained in section III.D.5. of this final notice, regarding the premium tax credit formula (PTCF). Accordingly, for the purposes of calculating the BHP payment rates, the RP, in accordance with 26 U.S.C. 36B(b)(3)(C), is defined as the adjusted monthly premium for an applicable second lowest cost silver plan. The applicable second lowest cost silver plan is defined in 26 U.S.C. 36B(b)(3)(B) as the second lowest cost silver plan of the individual market in the rating area in which the taxpayer resides that is offered through the same Exchange. We will use the adjusted monthly premium for an applicable second lowest cost silver plan in the applicable program year (2021) as the RP (except in the case of a state that elects to use the prior plan year's premium as the basis for the federal BHP payment for 2021, as described in section III.E. of this final notice).

The RP would be the premium applicable to non-tobacco users. This is consistent with the provision in 26 U.S.C. 36B(b)(3)(C) that bases the PTC on premiums that are adjusted for age alone, without regard to tobacco use, even for states that allow insurers to vary premiums based on tobacco use in accordance with 42 U.S.C. 300gg(a)(1)(A)(iv).

Consistent with the policy set forth in 26 CFR 1.36B–3(f)(6), to calculate the PTC for those enrolled in a QHP through an Exchange, we will not update the payment methodology, and subsequently the federal BHP payment rates, in the event that the second lowest cost silver plan used as the RP, or the lowest cost silver plan, changes (that is, terminates or closes enrollment during the year).

The applicable second lowest cost silver plan premium will be included in the BHP payment methodology by age range (if applicable), geographic area, and self-only or applicable category of family coverage obtained through the BHP.

We note that the choice of the second lowest cost silver plan for calculating BHP payments relies on several simplifying assumptions in its selection. For the purposes of determining the second lowest cost silver plan for calculating PTC for a person enrolled in a QHP through an Exchange, the applicable plan may differ for various reasons. For example, a different second lowest cost silver plan may apply to a family consisting of two adults, their child, and their niece than to a family with two adults and their children, because one or more QHPs in the family's geographic area might not offer family coverage that includes the niece. We believe that it is not possible to replicate such variations for calculating the BHP payment and believe that in the aggregate, they will not result in a significant difference in the payment. Thus, we will use the second lowest cost silver plan available to any enrollee for a given age, geographic area, and coverage category.

This choice of RP relies on an assumption about enrollment in the Exchanges. In previous methodologies for program years 2015 through 2019, we had assumed that all persons enrolled in the BHP would have elected to enroll in a silver level plan if they had instead enrolled in a QHP through an Exchange (and that the QHP premium would not be lower than the value of the PTC). In the November 2019 final BHP Payment Notice, we continued to use the second-lowest cost silver plan premium as the RP, but for the 2020 payments we changed the assumption about which metal-tier plans enrollees would choose (see section III.D.6. on the MTSF in this final notice). Therefore, for the 2021 payment methodology, we will continue to use the second-lowest cost silver plan premium as the RP, but account for how enrollees may choose other metal tier plans by applying the MTSF.

We do not believe it is appropriate to adjust the payment for an assumption that some BHP enrollees would not have enrolled in QHPs for purposes of calculating the BHP payment rates, since section 1331(d)(3)(A)(ii) of the Patient Protection and Affordable Care Act requires the calculation of such rates as if the enrollee had enrolled in a QHP through an Exchange.

The applicable age bracket (if any) will be one dimension of each rate cell. We will assume a uniform distribution of ages and estimate the average premium amount within each rate cell. We believe that assuming a uniform distribution of ages within these ranges is a reasonable approach and would produce a reliable determination of the total monthly payment for BHP enrollees. We also believe this approach would avoid potential inaccuracies that could otherwise occur in relatively small payment cells if age distribution were measured by the number of persons eligible or enrolled.

We will use geographic areas based on the rating areas used in the Exchanges. We will define each geographic area so that the RP is the same throughout the geographic area. When the RP varies within a rating area, we will define geographic areas as aggregations of counties with the same RP. Although plans are allowed to serve geographic areas smaller than counties after obtaining our approval, no geographic areas, for purposes of defining BHP payment rate cells, will be smaller than a county. We do not believe that this assumption will have a significant impact on federal payment levels and it would simplify both the calculation of BHP payment rates and the operation of the BHP.

Finally, in terms of the coverage category, federal payment rates will only recognize self-only and two-adult coverage, with exceptions that account for children who are potentially eligible for the BHP. First, in states that set the upper income threshold for children's Medicaid and CHIP eligibility below 200 percent of FPL (based on modified adjusted gross income (MAGI)), children in households with incomes between that threshold and 200 percent of FPL would be potentially eligible for the BHP. Currently, the only states in this category are Idaho and North Dakota.[11] Second, the BHP will include lawfully present immigrant children with household incomes at or below 200 percent of FPL in states that have not exercised the option under sections 1903(v)(4)(A)(ii) and 2107(e)(1)(E) of the Act to qualify all otherwise eligible, lawfully present immigrant children for Medicaid and CHIP. States that fall within these exceptions would be identified based on their Medicaid and CHIP State Plans, and the rate cells would include appropriate categories of BHP family coverage for children. For example, Idaho's Medicaid and CHIP eligibility is limited to families with MAGI at or below 185 percent FPL. If Idaho implemented a BHP, Idaho children with household incomes between 185 and 200 percent could qualify. In other states, BHP eligibility will generally be restricted to adults, since children who are citizens or lawfully present immigrants and live in households with incomes at or below 200 percent of FPL will qualify for Medicaid or CHIP, and thus be ineligible for a BHP under section 1331(e)(1)(C) of the Patient Protection and Affordable Care Act, which limits a BHP to individuals who are ineligible for minimum essential coverage (as defined in 26 U.S.C. 5000A(f)).

2. Premium Adjustment Factor (PAF)

The PAF considers the premium increases in other states that took effect after we discontinued payments to issuers for CSRs provided to enrollees in QHPs offered through Exchanges.

[11] CMCS. ''State Medicaid, CHIP and BHP Income Eligibility Standards Effective April 1, 2019.''

Despite the discontinuance of federal payments for CSRs, QHP issuers are required to provide CSRs to eligible enrollees. As a result, many QHP issuers increased the silver-level plan premiums to account for those additional costs; adjustments and how those were applied (for example, to only silver-level plans or to all metal tier plans) varied across states. For the states operating BHPs in 2018, the increases in premiums were relatively minor, because the majority of enrollees eligible for CSRs (and all who were eligible for the largest CSRs) were enrolled in the BHP and not in QHPs on the Exchanges, and therefore issuers in BHP states did not significantly raise premiums to cover unpaid CSR costs.

In the Final Administrative Order and the November 2019 final BHP Payment Notice, we incorporated the PAF into the BHP payment. Similarly, we will include the PAF in the 2021 payment methodology and to calculate it in the same manner as in the Final Administrative Order.

Under the Final Administrative Order, we calculated the PAF by using information requested from QHP issuers in each state and the District of Columbia, and determined the premium adjustment that the responding QHP issuers made to each silver level plan in 2018 to account for the discontinuation of CSR payments to QHP issuers. Based on the data collected, we estimated the median adjustment for silver level QHPs nationwide (excluding those in the two BHP states). To the extent that QHP issuers made no adjustment (or the adjustment was 0), this would be counted as 0 in determining the median adjustment made to all silver level QHPs nationwide. If the amount of the adjustment was unknown—or we determined that it should be excluded for methodological reasons (for example, the adjustment was negative, an outlier, or unreasonable)—then we did not count the adjustment towards determining the median adjustment.[12] The median adjustment for silver level QHPs is the nationwide median adjustment.

For each of the two BHP states, we determined the median premium adjustment for all silver level QHPs in that state, which we refer to as the state median adjustment. The PAF for each BHP state equaled 1 plus the nationwide median adjustment divided by 1 plus the state median adjustment for the BHP state. In other words,

PAF = (1 + Nationwide Median Adjustment) ÷ (1 + State Median Adjustment).

To determine the PAF described above, we collected QHP information from QHP issuers in each state and the District of Columbia to determine the premium adjustment those issuers made to each silver level plan offered through the Exchange in 2018 to account for the end of CSR payments. Specifically, we requested information showing the percentage change that QHP issuers made to the premium for each of their silver level plans to cover benefit expenditures associated with the CSRs, given the lack of CSR payments in 2018. This percentage change was a portion of the overall premium increase from 2017 to 2018.

According to our records, there were 1,233 silver-level QHPs that submitted premiums to operate on Exchanges in 2018. Of these 1,233 QHPs, 318 QHPs (25.8 percent) responded to our request for the percentage adjustment applied to silver-level QHP premiums in 2018 to account for the discontinuance of the CSRs. These 318 QHPs operated in 26 different states, with 10 of those states running SBEs (while we requested information only from QHP issuers in states serviced by an FFE, many of those issuers also had QHPs in states operating SBEs and submitted information for those states as well). Thirteen of these 318 QHPs were in New York (and none were in Minnesota). Excluding these 13 QHPs from the analysis, the nationwide median adjustment was 20.0 percent. Of the 13 QHPs in New York that responded, the state median adjustment was 1.0 percent. We believe that this is an appropriate adjustment for QHPs in Minnesota as well, based on the observed changes in New York's QHP premiums in response to the discontinuance of CSR payments (and the operation of the BHP in that state) and our analysis of expected QHP premium adjustments for states with BHPs. We calculated the proposed PAF as (1 + 20%) ÷ (1 + 1%) (or 1.20/1.01), which results in a value of 1.188.

We will continue to set the PAF equal to 1.188 for program year 2021. We believe that this value for the PAF continues to reasonably account for the increase in silver-level premiums experienced in non-BHP states that took effect after the discontinuance of the CSR payments. We believe that the impact of the increase in silver-level premiums in 2021 can reasonably be expected to be similar to that in 2018, because the discontinuation of CSR payments has not changed.

3. Population Health Factor (PHF)

The PHF will be included in the methodology to account for the potential differences in the average health status between BHP enrollees and persons enrolled through the Exchanges. To the extent that BHP enrollees would have been enrolled through an Exchange in the absence of a BHP in a state, the exclusion of those BHP enrollees in the Exchange may affect the average health status of the overall population and the expected QHP premiums.

We currently do not believe that there is evidence that the BHP population would have better or poorer health status than the Exchange population. At this time, there continues to be a lack of data on the experience in the Exchanges, which limits the ability to analyze the potential health differences between these groups of enrollees. More specifically, Exchanges have been in operation since 2014, and two states have operated BHPs since 2015, but data is not available to do the analysis necessary to determine if there are differences in the average health status between BHP and Exchange enrollees. In addition, differences in population health may vary across states. We also do not believe that sufficient data would be available to permit us to make a prospective adjustment to the PHF under § 600.610(c)(2) for the 2021 program year.

Given these analytic challenges and the limited data about Exchange coverage and the characteristics of BHP-eligible consumers, the PHF will continue to be 1.00 for program year 2021.

In the previous BHP payment methodologies, we included an option for states to include a retrospective population health status adjustment. We will provide states with the same option for 2021 to include a retrospective population health status adjustment in the certified methodology, which is subject to our review and approval. This option is described further in section III.F. of this final notice. Regardless of whether a state elects to include a retrospective population health status adjustment, we anticipate that, in future years, when additional data becomes available about Exchange coverage and the characteristics of BHP enrollees, we may estimate the PHF differently.

While the statute requires consideration of risk adjustment payments and reinsurance payments insofar as they would have affected the PTC that would have been provided to

[12] Some examples of outliers or unreasonable adjustments include (but are not limited to) values over 100 percent (implying the premiums doubled or more as a result of the adjustment), values more than double the otherwise highest adjustment, or non-numerical entries.

BHP-eligible individuals had they enrolled in QHPs, we will not require that a BHP's standard health plans receive such payments. As explained in the BHP final rule, BHP standard health plans are not included in the federally-operated risk adjustment program.[13] Further, standard health plans do not qualify for payments under the transitional reinsurance program established under section 1341 of the Patient Protection and Affordable Care Act for the years the program was operational (2014 through 2016).[14] To the extent that a state operating a BHP determines that, because of the distinctive risk profile of BHP-eligible consumers, BHP standard health plans should be included in mechanisms that share risk with other plans in the state's individual market, the state would need to use other methods for achieving this goal.

4. Household Income (I)

Household income is a significant determinant of the amount of the PTC that is provided for persons enrolled in a QHP through an Exchange. Accordingly, the BHP payment methodology will incorporate household income into the calculations of the payment rates through the use of income-based rate cells. We will define household income in accordance with the definition of MAGI in 26 U.S.C. 36B(d)(2)(B) and consistent with the definition in 45 CFR 155.300. Income would be measured relative to the FPL, which is updated periodically in the **Federal Register** by the Secretary under the authority of 42 U.S.C. 9902(2). Household size and income as a percentage of FPL will be used as factors in developing the rate cells. We will use the following income ranges measured as a percentage of FPL:[15]

- 0–50 percent.
- 51–100 percent.
- 101–138 percent.
- 139–150 percent.
- 151–175 percent.
- 176–200 percent.

We will assume a uniform income distribution for each federal BHP payment cell. We believe that assuming a uniform income distribution for the income ranges proposed would be reasonably accurate for the purposes of calculating the BHP payment and would avoid potential errors that could result if other sources of data were used to estimate the specific income distribution of persons who are eligible for or enrolled in the BHP within rate cells that may be relatively small.

Thus, when calculating the mean, or average, PTC for a rate cell, we will calculate the value of the PTC at each 1 percentage point interval of the income range for each federal BHP payment cell and then calculate the average of the PTC across all intervals. This calculation will rely on the PTC formula described in section III.D.5. of this final notice.

As the APTC for persons enrolled in QHPs would be calculated based on their household income during the open enrollment period, and that income would be measured against the FPL at that time, we will adjust the FPL by multiplying the FPL by a projected increase in the CPI–U between the time that the BHP payment rates are calculated and the QHP open enrollment period, if the FPL is expected to be updated during that time. The projected increase in the CPI–U will be based on the intermediate inflation forecasts from the most recent OASDI and Medicare Trustees Reports.[16]

5. Premium Tax Credit Formula (PTCF)

In Equation 1 described in section III.A.1. of this final notice to use the formula described in 26 U.S.C. 36B(b) to calculate the estimated PTC that would be paid on behalf of a person enrolled in a QHP on an Exchange as part of the BHP payment methodology. This formula is used to determine the contribution amount (the amount of premium that an individual or household theoretically would be required to pay for coverage in a QHP on an Exchange), which is based on (A) the household income; (B) the household income as a percentage of FPL for the family size; and (C) the schedule specified in 26 U.S.C. 36B(b)(3)(A) and shown below.

The difference between the contribution amount and the adjusted monthly premium (that is, the monthly premium adjusted for the age of the enrollee) for the applicable second lowest cost silver plan is the estimated amount of the PTC that would be provided for the enrollee.

The PTC amount provided for a person enrolled in a QHP through an Exchange is calculated in accordance with the methodology described in 26 U.S.C. 36B(b)(2). The amount is equal to the lesser of the premium for the plan in which the person or household enrolls, or the adjusted premium for the applicable second lowest cost silver plan minus the contribution amount.

The applicable percentage is defined in 26 U.S.C. 36B (b)(3)(A) and 26 CFR 1.36B–3(g) as the percentage that applies to a taxpayer's household income that is within an income tier specified in Table 1 of the proposed notice, increasing on a sliding scale in a linear manner from an initial premium percentage to a final premium percentage specified in Table 1. We will continue to use applicable percentages to calculate the estimated PTC that would be paid on behalf of a person enrolled in a QHP on an Exchange as part of the BHP payment methodology as part of Equation 1. The applicable percentages in Table 1 for calendar year (CY) 2020 will be effective for BHP program year 2021. The applicable percentages will be updated in future years in accordance with 26 U.S.C. 36B(b)(3)(A)(ii).

TABLE 1—APPLICABLE PERCENTAGE TABLE FOR CY 2020 [a]

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 133%	2.06	2.06
133% but less than 150%	3.09	4.12
150% but less than 200%	4.12	6.49
200% but less than 250%	6.49	8.29
250% but less than 300%	8.29	9.78

[13] See 79 FR at 14131.

[14] See 45 CFR 153.400(a)(2)(iv) (BHP standard health plans are not required to submit reinsurance contributions), 153.20 (definition of ''Reinsurance-eligible plan'' as not including ''health insurance coverage not required to submit reinsurance contributions''), 153.230(a) (reinsurance payments under the national reinsurance parameters are available only for ''Reinsurance-eligible plans'').

[15] These income ranges and this analysis of income apply to the calculation of the PTC.

[16] *See* Table IV A1 from the 2019 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, available at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2019.pdf.*

TABLE 1—APPLICABLE PERCENTAGE TABLE FOR CY 2020 [a]—Continued

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
300% but not more than 400%	9.78	9.78

[a] IRS Revenue Procedure 2019–29. *https://www.irs.gov/pub/irs-drop/rp-19-29.pdf.*

6. Metal Tier Selection Factor (MTSF)

On the Exchange, if an enrollee chooses a QHP and the value of the APTC to which the enrollee is entitled is greater than the premium of the plan selected, then the APTC is reduced to be equal to the premium. This usually occurs when enrollees eligible for larger APTCs choose bronze-level QHPs, which typically have lower premiums on the Exchange than silver-level QHPs. Prior to 2018, we believed that the impact of these choices and plan selections on the amount of PTCs that the federal government paid was relatively small. During this time, most enrollees in income ranges up to 200 percent FPL chose silver-level QHPs, and in most cases where enrollees chose bronze-level QHPs, the premium was still more than the PTC. Based on our analysis of the percentage of persons with incomes below 200 percent FPL choosing bronze-level QHPs and the average reduction in the PTCs paid for those enrollees, we believe that the total PTCs paid for persons with incomes below 200 percent FPL were reduced by about 1 percent in 2017. Therefore, we made no adjustment based on the effect for enrollees choosing non-silver-level QHPs in developing the BHP payment methodology applicable to program years prior to 2018. However, after the discontinuance of the CSR payments in October 2017, several changes occurred that increased the expected impact of enrollees' plan selection choices on the amount of PTC the government paid. These changes led to a larger percentage of individuals choosing bronze-level QHPs, and for those individuals who chose bronze-level QHPs, these changes also generally led to larger reductions in PTCs paid by the federal government per individual. The combination of more individuals with incomes below 200 percent of FPL choosing bronze-level QHPs and the reduction in PTCs had an impact on PTCs paid by the federal government for enrollees with incomes below 200 percent FPL.

Silver-level QHP premiums for the 2018 benefit year increased substantially relative to other metal tier plans in many states (on average, by about 20 percent). We believe this contributed to an increase in the percentage of enrollees with lower incomes choosing bronze-level QHPs, despite being eligible for CSRs in silver-level QHPs, because many were able to purchase bronze-level QHPs and pay $0 in premium; according to CMS data, the percentage of persons with incomes between 0 percent and 200 percent of FPL eligible for CSRs (those who would be eligible for the BHP if the state operated a BHP) selecting bronze level QHPs increased from about 11 percent in 2017 to about 13 percent in 2018. In addition, the likelihood that a person choosing a bronze-level QHP would pay $0 premium increased, and the difference between the bronze-level QHP premium and the available PTC widened. Between 2017 and 2018, the ratio of the average silver-level QHP premium to the average bronze-level QHP premium increased: the average silver level QHP premium was 17 percent higher than the average bronze-level QHP premium in 2017, whereas the average silver-level QHP premium was 33 percent higher than the average bronze-level QHP premium in 2018. Similarly, the average estimated reduction in APTC for enrollees with incomes between 0 percent and 200 percent FPL that chose bronze level QHPs increased from about 11 percent in 2017 to about 23 percent in 2018 (after adjusting for the average age of bronze-level QHP and silver-level QHP enrollees); that is, in 2017, enrollees with incomes in this range who chose bronze-level QHPs received 11 percent less than the full value of the APTC, and in 2018, those enrollees who chose bronze-level QHPs received 23 percent less than the full value of the APTC. The discontinuance of the CSR payments led to increases in silver-level QHP premiums (and thus in the total potential PTCs), but did not generally increase the bronze-level QHP premiums in most states; we believe this is the primary reason for the increase in the percentage reduction in PTCs paid by the government for those who enrolled in bronze-level QHPs between 2017 and 2018.

Therefore, we believe that the impacts on the amount of PTC the government would pay due to enrollees' plan selection choices are larger and thus more significant, and we will include an adjustment (the MTSF) in the BHP payment methodology to account for the effects of these choices. Section 1331(d)(3) of the Patient Protection and Affordable Care Act requires that the BHP payments to states be based on what would have been provided if such eligible individuals were allowed to enroll in QHPs, and we believe that it is appropriate to consider how individuals would have chosen different plans—including across different metal tiers—as part of the BHP payment methodology.

We finalized the application of the MTSF for the first time in the 2020 payment methodology, and we will calculate the MTSF using the same approach as finalized there (84 FR 59543). First, we will calculate the percentage of enrollees with incomes below 200 percent of the FPL (those who would be potentially eligible for the BHP) in non-BHP states who enrolled in bronze-level QHPs in 2018. Second, we will calculate the ratio of the average PTC paid for enrollees in this income range who selected bronze-level QHPs compared to the average PTC paid for enrollees in the same income range who selected silver-level QHPs. Both of these calculations will be done using CMS data on Exchange enrollment and payments.

The MTSF will be set to the value of 1 minus the product of the percentage of enrollees who chose bronze-level QHPs and 1 minus the ratio of the average PTC paid for enrollees in bronze-level QHPs to the average PTC paid for enrollees in silver-level QHPs:

MTSF = 1 − (percentage of enrollees in bronze-level QHPs × (1 − average PTC paid for bronze-level QHP enrollees/average PTC paid for silver-level QHP enrollees))

We have calculated that 12.68 percent of enrollees in households with incomes below 200 percent of the FPL selected bronze-level QHPs in 2018. We also calculated that the ratio of the average PTC paid for those enrollees in bronze-level QHPs to the average PTCs paid for enrollees in silver-level QHPs was 76.66 percent after adjusting for the average age of bronze level and silver-level QHP enrollees. The MTSF is equal to 1 minus the product of the percentage of enrollees in bronze-level QHPs (12.68 percent) and 1 minus the ratio of the average PTC paid for bronze-level QHP

enrollees to the average PTC paid for silver-level QHP enrollees (76.66 percent). Thus, the MTSF would be calculated as:

$$MTSF = 1 - (12.68\% \times (1 - 76.66\%))$$

Therefore, the value of the MTSF for 2021 will be 97.04 percent.

7. Income Reconciliation Factor (IRF)

For persons enrolled in a QHP through an Exchange who receive APTC, there will be an annual reconciliation following the end of the year to compare the APTC to the correct amount of PTC based on household circumstances shown on the federal income tax return. Any difference between the latter amounts and the APTC paid during the year would either be paid to the taxpayer (if too little APTC was paid) or charged to the taxpayer as additional tax (if too much APTC was paid, subject to any limitations in statute or regulation), as provided in 26 U.S.C. 36B(f).

Section 1331(e)(2) of the Patient Protection and Affordable Care Act specifies that an individual eligible for the BHP may not be treated as a ''qualified individual'' under section 1312 of the Patient Protection and Affordable Care Act who is eligible for enrollment in a QHP offered through an Exchange. We are defining ''eligible'' to mean anyone for whom the state agency or the Exchange assesses or determines, based on the single streamlined application or renewal form, as eligible for enrollment in the BHP. Because enrollment in a QHP is a requirement for individuals to receive APTC, individuals determined or assessed as eligible for a BHP are not eligible to receive APTC for coverage in the Exchange. Because they do not receive APTC, BHP enrollees, on whom the BHP payment methodology is generally based, are not subject to the same income reconciliation as Exchange consumers. Nonetheless, there may still be differences between a BHP enrollee's household income reported at the beginning of the year and the actual household income over the year. These may include small changes (reflecting changes in hourly wage rates, hours worked per week, and other fluctuations in income during the year) and large changes (reflecting significant changes in employment status, hourly wage rates, or substantial fluctuations in income). There may also be changes in household composition. Thus, we believe that using unadjusted income as reported prior to the BHP program year may result in calculations of estimated PTC that are inconsistent with the actual household incomes of BHP enrollees during the year. Even if the BHP adjusts household income determinations and corresponding claims of federal payment amounts based on household reports during the year or data from third-party sources, such adjustments may not fully capture the effects of tax reconciliation that BHP enrollees would have experienced had they been enrolled in a QHP through an Exchange and received APTC.

Therefore, in accordance with current practice, we will include in Equation 1 an adjustment, the IRF, that will account for the difference between calculating estimated PTC using: (a) Household income relative to FPL as determined at initial application and potentially revised mid-year under § 600.320, for purposes of determining BHP eligibility and claiming federal BHP payments; and (b) actual household income relative to FPL received during the plan year, as it would be reflected on individual federal income tax returns. This adjustment will seek prospectively to capture the average effect of income reconciliation aggregated across the BHP population had those BHP enrollees been subject to tax reconciliation after receiving APTC for coverage provided through QHPs offered on an Exchange. Consistent with the methodology used in past years, we estimated reconciliation effects based on tax data for 2 years, reflecting income and tax unit composition changes over time among BHP-eligible individuals.

The OTA maintains a model that combines detailed tax and other data, including Exchange enrollment and PTC claimed, to project Exchange premiums, enrollment, and tax credits. For each enrollee, this model compares the APTC based on household income and family size estimated at the point of enrollment with the PTC based on household income and family size reported at the end of the tax year. The former reflects the determination using enrollee information furnished by the applicant and tax data furnished by the IRS. The latter would reflect the PTC eligibility based on information on the tax return, which would have been determined if the individual had not enrolled in the BHP. Consistent with prior years, we proposed to use the ratio of the reconciled PTC to the initial estimation of PTC as the IRF in Equations (1a) and (1b) for estimating the PTC portion of the BHP payment rate.

OTA estimates the IRF separately for states that have implemented the Medicaid eligibility expansion and those that have not. In previous program years, we used the average of these two values to set the value for the IRF. To date, the only states that have operated a BHP are states that implemented the Medicaid eligibility expansion. Therefore, for 2021, we are using the value only for states that have implemented the Medicaid eligibility expansion. For 2021, OTA has estimated that the IRF for states that have implemented the Medicaid eligibility expansion to cover adults up to 133 percent of the FPL will be 99.23 percent.

E. State Option To Use Prior Program Year QHP Premiums for BHP Payments

In the interest of allowing states greater certainty in the total BHP federal payments for a given plan year, we have given states the option to have their final federal BHP payment rates calculated using a projected ARP (that is, using premium data from the prior program year multiplied by the premium trend factor (PTF), as described in Equation (2b). For program years 2015 through 2018, we required states to make their election to have their final federal BHP payment rates calculated using a projected ARP by May 15 of the year preceding the applicable program year. Because this final notice is published after May 15, 2020, we are requiring states to inform CMS in writing of their election for the 2021 program year 60 days following the publication of this final notice.

For Equation (2b), we will define the PTF as follows:

PTF: In the case of a state that would elect to use the 2020 premiums as the basis for determining the 2021 BHP payment, it would be appropriate to apply a factor that would account for the change in health care costs between the year of the premium data and the BHP program year. This factor would approximate the change in health care costs per enrollee, which would include, but not be limited to, changes in the price of health care services and changes in the utilization of health care services. This would provide an estimate of the adjusted monthly premium for the applicable second lowest cost silver plan that would be more accurate and reflective of health care costs in the BHP program year.

For the PTF, we will use the annual growth rate in private health insurance expenditures per enrollee from the National Health Expenditure (NHE) projections, developed by the Office of the Actuary in CMS (*https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html*). For BHP program year 2021, the PTF will be 4.8 percent.

F. State Option To Include Retrospective State-Specific Health Risk Adjustment in Certified Methodology

To determine whether the potential difference in health status between BHP enrollees and consumers in an Exchange would affect the PTC and risk adjustment payments that would have otherwise been made had BHP enrollees been enrolled in coverage through an Exchange, we will provide states implementing the BHP the option to propose and to implement, as part of the certified methodology, a retrospective adjustment to the federal BHP payments to reflect the actual value that would be assigned to the population health factor (or risk adjustment) based on data accumulated during that program year for each rate cell.

We acknowledge that there is uncertainty with respect to this factor due to the lack of available data to analyze potential health differences between the BHP and QHP populations, which is why, absent a state election, we will use a value for the PHF (see section III.D.3. of this final notice) to determine a prospective payment rate which assumes no difference in the health status of BHP enrollees and QHP enrollees. There is considerable uncertainty regarding whether the BHP enrollees will pose a greater risk or a lesser risk compared to the QHP enrollees, how to best measure such risk, the potential effect such risk would have had on PTC, and risk adjustment that would have otherwise been made had BHP enrollees been enrolled in coverage through an Exchange. To the extent, however, that a state would develop an approved protocol to collect data and effectively measure the relative risk and the effect on federal payments of PTCs and CSRs, we will permit a retrospective adjustment that would measure the actual difference in risk between the two populations to be incorporated into the certified BHP payment methodology and used to adjust payments in the previous year.

For a state electing the option to implement a retrospective population health status adjustment as part of the BHP payment methodology applicable to the state, we will require the state to submit a proposed protocol to CMS, which would be subject to approval by us and would be required to be certified by the Chief Actuary of CMS, in consultation with the OTA. We applied the same protocol for the population health status adjustment as what is set forth in guidance in *Considerations for Health Risk Adjustment in the Basic Health Program in Program Year 2015* (*http://www.medicaid.gov/Basic-Health-Program/Downloads/Risk-Adjustment-and-BHP-White-Paper.pdf*). We proposed to require a state to submit its proposed protocol by August 1, 2020. Given the publication date of this final notice, we will require a state to submit its proposed protocol for the 2021 program year within 30 days after the publication of this final notice. This submission will need to include descriptions of how the state would collect the necessary data to determine the adjustment, including any contracting contingences that may be in place with participating standard health plan issuers. We will provide technical assistance to states as they develop their protocols, as requested. To implement the population health status adjustment, we must approve the state's protocol by December 31, 2020 for the 2021 program year. Finally, the state will be required to complete the population health status adjustment at the end of the program year based on the approved protocol. After the end of the program year, and once data is made available, we will review the state's findings, consistent with the approved protocol, and make any necessary adjustments to the state's federal BHP payment amounts. If we determine that the federal BHP payments were less than they would have been using the final adjustment factor, we would apply the difference to the state's next quarterly BHP trust fund deposit. If we determine that the federal BHP payments were more than they would have been using the final reconciled factor, we would subtract the difference from the next quarterly BHP payment to the state.

IV. Collection of Information Requirements

This final methodology for program year 2021 is similar to the methodology finalized for program year 2020 in the November 2019 final BHP Payment Notice. While we are finalizing one change related to the calculation of the Income Reconciliation Factor, the change will not revise or impose any new reporting, recordkeeping, or third-party disclosure requirements or burden on states operating a BHP, as it pertains to any of our active collections of information Although the methodology's information collection requirements and burden had at one time been approved by OMB under control number 0938–1218 (CMS–10510), the approval was discontinued on August 31, 2017, since we adjusted our estimated number of respondents below the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) threshold of ten or more respondents (only New York and Minnesota operate a BHP at this time). Since we continue to estimate fewer than ten respondents, the final 2021 methodology is not subject to the requirements of the PRA.

We sought comment on whether or not to solicit information from QHP issuers on the amount of the adjustment to premiums to account for the discontinuance of CSR payments. We noted that we believe that soliciting such information would likely impose some additional reporting requirements on QHP issuers and sought comments on the amount of burden this would create.

We received no comments on the Collection of Information Requirements section of the 2021 proposed BHP Payment Notice, including whether or not to solicit information from QHP issuers on the amount of the adjustment to premiums to account for the discontinuance of CSR payments.

V. Regulatory Impact Analysis

A. Statement of Need

Section 1331 of the Patient Protection and Affordable Care Act (42 U.S.C. 18051) requires the Secretary to establish a BHP, and section 1331(d)(1) specifically provides that if the Secretary finds that a state meets the requirements of the program established under section 1331(a) of the Patient Protection and Affordable Care Act, the Secretary shall transfer to the state federal BHP payments described in section 1331(d)(3). This methodology provides for the funding methodology to determine the federal BHP payment amounts required to implement these provisions for program year 2021.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2) and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) (Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). As noted in the BHP final rule, the BHP provides states the flexibility to establish an alternative coverage program for low-income individuals who would otherwise be eligible to purchase coverage on an Exchange. Because we make no changes in methodology that would have a consequential effect on state participation incentives, or on the size of either the BHP program or offsetting PTC and CSR expenditures, the effects of the changes made in this payment notice would not approach the $100 million threshold, and hence it is neither an economically significant rule under E.O. 12866 nor a major rule under the Congressional Review Act. Moreover, the regulation is not economically significant within the meaning of section 3(f)(1) of the Executive Order.

C. Anticipated Effects

The provisions of this final notice are designed to determine the amount of funds that will be transferred to states offering coverage through a BHP rather than to individuals eligible for federal financial assistance for coverage purchased on the Exchange. We are uncertain what the total federal BHP payment amounts to states will be as these amounts will vary from state to state due to the state-specific factors and conditions. For example, total federal BHP payment amounts may be greater in more populous states simply by virtue of the fact that they have a larger BHP-eligible population and total payment amounts are based on actual enrollment. Alternatively, total federal BHP payment amounts may be lower in states with a younger BHP-eligible population as the RP used to calculate the federal BHP payment will be lower relative to older BHP enrollees. While state composition will cause total federal BHP payment amounts to vary from state to state, we believe that the methodology, like the methodology used in 2020, accounts for these variations to ensure accurate BHP payment transfers are made to each state.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare an initial regulatory flexibility analysis to describe the impact of the rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. Individuals and states are not included in the definition of a small entity. Few of the entities that meet the definition of a small entity as that term is used in the RFA would be impacted directly by this methodology.

Because this final methodology is focused solely on federal BHP payment rates to states, it does not contain provisions that would have a direct impact on hospitals, physicians, and other health care providers that are designated as small entities under the RFA. Accordingly, we have determined that the methodology, like the previous methodology and the final rule that established the BHP program, will not have a significant economic impact on a substantial number of small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a methodology may have a significant economic impact on the operations of a substantial number of small rural hospitals. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. For the preceding reasons, we have determined that this methodology will not have a significant impact on a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 2005 requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation, by state, local, or tribal governments, in the aggregate, or by the private sector. In 2020, that threshold is approximately $156 million. States have the option, but are not required, to establish a BHP. Further, the methodology would establish federal payment rates without requiring states to provide the Secretary with any data not already required by other provisions of the Patient Protection and Affordable Care Act or its implementing regulations. Thus, the final payment methodology does not mandate expenditures by state governments, local governments, or tribal governments.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a final rule that imposes substantial direct effects on states, preempts state law, or otherwise has federalism implications. The BHP is entirely optional for states, and if implemented in a state, provides access to a pool of funding that would not otherwise be available to the state. Accordingly, the requirements of Executive Order 13132 do not apply to this final notice.

D. Alternative Approaches

We considered several alternatives in developing the proposed BHP payment methodology for 2021, and we discuss some of these alternatives below.

We considered alternatives as to how to calculate the PAF in the proposed methodology for 2021. The proposed value for the PAF is 1.188, which is the same as was used for 2018, 2019, and 2020. We believe it would be difficult to get the updated information from QHP issuers comparable to what was used to develop the 2018 factor, because QHP issuers may not distinctly consider the impact of the discontinuance of CSR payments on the QHP premiums any longer. We do not have reason to believe that the value of the PAF would change significantly between program years 2018 and 2021. We continued to consider whether or not there are other methodologies or data sources we may be able to use to develop the PAF. We also considered whether or not to update the value of the PAF for 2021 after the end of the 2021 BHP program year.

We also considered alternatives as how to calculate the MTSF in the proposed methodology for 2021. The proposed value for the MTSF is 97.04 percent, which is the same as was finalized for 2020. We believe that we would use the latest data available each year; for example, we anticipate data

from 2019 being available next year in developing the subsequent BHP payment methodology. We considered whether or not there are other methodologies or data sources we may be able to use to develop the MTSF. We also considered whether or not to update the value of the MTSF for 2021 after the end of the 2021 BHP program year.

We considered alternatives as how to calculate the IRF in the proposed methodology for 2021. We proposed to calculate the value of this factor based on modeling by OTA, as we have done for prior years. For the 2021 BHP payment methodology, we considered calculating the IRF from the latest available year of Exchange data. We do not anticipate this will lead to a significant change in the value of the IRF. In addition, we also considered whether to set the IRF as the average of the expected values for states that have expanded Medicaid eligibility and for states that have not, or to set the IRF as the value for only states that have expanded Medicaid eligibility, because only states that have expanded eligibility have operated a BHP to date.

We also considered whether or not to continue to provide states the option to develop a protocol for a retrospective adjustment to the population health factor (PHF) as we did in previous payment methodologies. We believe that continuing to provide this option is appropriate and likely to improve the accuracy of the final payments.

We also considered whether or not to require the use of the program year premiums to develop the federal BHP payment rates, rather than allow the choice between the program year premiums and the prior year premiums trended forward. We believe that the payment rates can still be developed accurately using either the prior year QHP premiums or the current program year premiums and that it is appropriate to continue to provide the states the option.

Many of the factors in this final notice are specified in statute; therefore, for these factors we are limited in the alternative approaches we could consider. One area in which we previously had and still have a choice is in selecting the data sources used to determine the factors included in the methodology. Except for state-specific RPs and enrollment data, we are using national rather than state-specific data. This is due to the lack of currently available state-specific data needed to develop the majority of the factors included in the methodology. We believe the national data will produce sufficiently accurate determinations of payment rates. In addition, we believe that this approach will be less burdensome on states. In many cases, using state-specific data would necessitate additional requirements on the states to collect, validate, and report data to CMS. By using national data, we are able to collect data from other sources and limit the burden placed on the states. For RPs and enrollment data, we are using state-specific data rather than national data as we believe state-specific data will produce more accurate determinations than national averages.

We requested public comment on these alternative approaches.

Our responses to public comments on these alternative approaches are in section II.E. of this final notice.

E. Regulatory Reform Analysis Under E.O. 13771

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017 and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This final rule, if finalized as proposed, is expected to be neither an E.O. 13771 regulatory action nor an E.O. 13771 deregulatory action.

F. Conclusion

We believe that this final BHP payment methodology is effectively the same methodology as finalized for 2020. BHP payment rates may change as the values of the factors change, most notably the QHP premiums for 2020 or 2021. We do not anticipate this final methodology to have any significant effect on BHP enrollment in 2021.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Dated: August 6, 2020.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 6, 2020.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–17553 Filed 8–10–20; 4:15 pm]

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Proposed Rules

Federal Register
Vol. 85, No. 157
Thursday, August 13, 2020

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Document Number AMS–SC–20–0014]

Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order; Assessment Rate Increase

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on amending the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order) to increase the assessment rate from $0.35 to $0.41 per thousand board feet (mbf). The Order is administered by the Softwood Lumber Board (Board) with oversight by the U.S. Department of Agriculture (USDA). Under the program, assessments are collected from domestic manufacturers and importers and used for research and promotion projects designed to strengthen the position of softwood lumber in the marketplace. This proposal would also add the conversion factor for square meters to board feet and make one conforming change.

DATES: Comments must be received by October 13, 2020.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. All comments must be submitted through the Federal e-rulemaking portal at *http://www.regulations.gov* and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the rulemaking record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Andrea Ricci, Marketing Specialist, Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; telephone: (202) 572–1442; facsimile: (202) 205–2800; or electronic mail: *Andrea.Ricci@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal affecting 7 CFR part 1217 (herein the ''Order'') is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. 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).

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, must be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This proposal invites comments on a proposal to amend the Order by increasing the assessment rate from $0.35 to $0.41 per mbf of softwood lumber shipped within or imported into the United States. The Order is administered by the Board with oversight by the USDA. Under the program, assessments are collected from domestic manufacturers and importers and used for research and promotion projects designed to strengthen the position of softwood lumber in the marketplace. The additional funds would enable the Board to maintain its existing programs, while supporting new programs that would help maintain and expand markets for softwood lumber. This proposal would also add the conversion factor for square meters to board feet and make one conforming change.

The Order specifies that the funds to cover the Board's expenses shall be paid by assessments on manufacturers for the U.S. market, other income of the Board, and other funds available to the Board. Domestic manufacturers pay assessments based on the volume of

softwood lumber shipped within the United States and importers pay assessments based on the volume of softwood lumber imported to the United States. Assessments are collected per mbf of softwood lumber, except that no entity shall pay an assessment on the first 15 million board feet (mmbf) of softwood lumber otherwise subject to assessments in a fiscal year. Domestic manufacturers are required to remit to the Board assessments owed no later than 30 calendar days of the month following the end of the quarter in which the softwood lumber was shipped. Importers are responsible for paying assessments to the Board on softwood lumber imported into the United States through the U.S. Customs and Border Protection (CBP). If CBP does not collect an assessment from the importer, the importer is responsible for paying the assessment to the Board no later than 30 calendar days of the month following the end of the quarter in which the softwood lumber was imported. Domestic manufactures and importers must also remit to the Board required reports. The Order also provides for exemptions from assessments. Section 1217.53 specifies that U.S. manufacturers and importers that domestically ship and/or import less than 15 mmbf annually, exports of softwood lumber from the United States, and shipments and imports of organic softwood lumber are exempt from the Order's assessment requirements.

Pursuant to § 1217.52, and subject to the exemptions specified in § 1217.53, each domestic manufacturer and importer shall pay an assessment rate of $0.35 per mbf of softwood lumber, except that no entity shall pay an assessment on the first 15 mmbf of softwood lumber otherwise subject to assessment in a fiscal year. The Board may recommend to the Secretary a change in the assessment rate as it deems appropriate by at least a majority of Board members plus two (exclusive of vacant seats). The assessment rate may not be less than $0.35 per mbf nor more than $0.50 per mbf.

The $0.35 per mbf assessment rate has been in effect since the program's inception in 2011. The Board's fiscal year runs from January 1 through December 31. Board expenditures for the five-year period from 2014–2018 have ranged from a low of $12.35 million in 2014 to a high of $15.32 million in 2016; expenditures in 2018 were $14.23 million. Program expenditures averaged $12.96 million during those five years, with annual expenditures averaging $3.29 million (24 percent) for research conducted on wood standards; $4.06 million (29 percent) on a communications program, which includes continuing education courses for architects and engineers; and $3.94 million (28 percent) on a construction and design program that provides technical support to architects and structural engineers about using wood. Pursuant to § 1217.50(h), administrative expenditures have been under 8 percent of the assessments collected and other income received by and available to the Board for the fiscal year.

Board assessment income has ranged from $12.55 million in 2014 to $13.74 million in 2018. About 70 percent of the assessment income is from domestic manufacturers and 30 percent is from importers. Additionally, pursuant to § 1217.50(i), the Board maintains a monetary reserve with funds that do not exceed one fiscal period's budget. This proposal would also amend § 1217.52(h) to add the conversion factor for square meters to board feet. Currently, the Order provides a factor used to convert cubic meters of imported softwood lumber into the equivalent volume of thousands of board feet, thus enabling the Board to calculate appropriate assessments. Softwood lumber is also being imported in square meters. Adding a conversion factor for square meters would better reflect current industry practices and facilitate the administration of the program.

Finally, this proposed rule would make a conforming change to § 1217.52(c) to reflect previously revised voting requirements in § 1217.44. In a final rule published in the **Federal Register** on September 25, 2019 (84 FR 50294), voting requirements prescribed in § 1217.44 were revised to specify that recommendations to change the assessment rate require affirmation by at least a majority of Board members plus two (exclusive of vacant seats). Currently, corresponding language in § 1217.52(c) specifies that an affirmative vote of at least two-thirds of Board members is required for assessment rate recommendations. A conforming change in this proposed rule would revise § 1217.52(c) to require affirmation of assessment rate recommendations by a Board majority plus two, thus harmonizing the language in the two sections related to assessment recommendations.

Board Recommendation

The Board met on November 20, 2019 and recommended increasing its assessment rate from $0.35 to $0.41 per mbf. The additional funds would enable the Board to maintain its existing programs, while supporting new programs that would help maintain and expand markets for softwood lumber. For the 2016–2018 fiscal years, the Board has used reserve funds to bridge the deficit between income and expenses. In 2019, the Board kept expenditures in line with income and had to make cuts to its programs, primarily its communications program. The Board discussed the deficit spending that occurred from 2016–2018 and the funding cuts in 2019, along with the impacts of inflation, and determined that without the increase it would not be able to maintain its current programs nor be able to address gaps that limit the Board's ability to expand the market for softwood lumber. Continuing at the current funding level would limit its ability to capitalize on new opportunities or address challenges and maintain the impact the Board has achieved for the softwood lumber industry in prior years. Additionally, the current funding level restricts the ability to accelerate softwood lumber's increase in market share and lumber usage in the non-residential sector.

The Board's funding of research on wood standards has facilitated interest in using wood-based building systems in non-traditional markets, such as tall wood building. The 2021 International Code Council building standards will recognize the construction of mass timber buildings up to 18 stories in height. These new opportunities require a more comprehensive approach, particularly in outreach and education initiatives. The Board recognized that its funded programs must go beyond inspiring professionals to think about building with wood. These individuals need resources and technical assistance.

The Board estimated the proposed increased assessment rate of $0.41 per mbf would generate additional revenues as shown in Table 1. The consumption forecast and assessable board feet figures are shown in billion board feet (bbf).

TABLE 1—ADDITIONAL ASSESSMENT REVENUE AT THE PROPOSED $0.41 PER MBF ASSESSMENT RATE

	2021	2022	2023	2024	2025
Consumption Forecast (bbf) [1]	49.69	49.39	52.72	55.64	57.52

TABLE 1—ADDITIONAL ASSESSMENT REVENUE AT THE PROPOSED $0.41 PER MBF ASSESSMENT RATE—Continued

	2021	2022	2023	2024	2025
Assessable Board Feet (bbf) [2]	40.30	40.05	42.76	45.13	46.65
Estimated Assessment Revenue ($0.35/mbf)	$14,104,640	$14,018,162	$14,965,761	$15,794,788	$16,326,618
Estimated Assessment Revenue ($0.41/mbf)	$16,522,578	$16,421,276	$17,531,320	$18,502,466	$19,125,466
Additional Assessment Revenue at $0.41/mbf) [3]	$2,417,938	$2,403,114	$2,565,559	$2,707,678	$2,798,849

[1] Source: Forest Economic Advisors (*https://www.getfea.com/data-center*); data frequently revised; pulled 2/21/2020.
[2] Assumes 18.9 percent exemption rate.
[3] Difference of estimated assessment revenue at $0.41/mbf and estimated assessment revenue at $0.35/mbf.

The additional funds would support programs targeting contractors and developers to address installer training and skills development; establish an education program that would target architecture and engineering students, as well as professionals; and restore the Board's communications program budget so that by 2025 it would be equivalent to 2018 expenditures. Therefore, the Board recommended increasing the assessment rate in the Order from $0.35 to $0.41 per mbf. USDA accepts and agrees with the Board's reasoning for increasing the assessment rate. Accordingly, USDA proposes to amend § 1217.52(b) to specify a $0.41 per mbf assessment rate.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural service firms (domestic manufacturers and importers) as those having annual receipts of no more than $8 million.[1]

The Random Lengths Publications, Inc.'s yearly average framing lumber composite price was $356 per mbf in 2019. Dividing the $8 million threshold that defines an agricultural service firm as small by this price results in a maximum threshold of 22.5 million board feet (mmbf) of softwood lumber per year that a domestic manufacturer or importer may ship to be considered a small entity for purposes of the RFA. Table 2 shows the number of entities and the amount of volume they represent that may be categorized as small or large based on the SBA definition.

TABLE 2—DOMESTIC MANUFACTURERS AND IMPORTERS BY SBA SIZE STANDARDS, 2019

	Domestic manufacturers		Importers		Totals	
	Entities	Volume (MMBF)	Entities	Volume (MMBF)	Entities	Volume (MMBF)
Small	226	1,991	774	1,257	1,000	3,248
Large	290	32,229	106	32,582	396	64,811
Total	516	34,220	880	33,839	1,396	68,059

Sources: Forest Economic Advisors; Customs and Border Protection.

As shown in Table 2, there are a total of 1,396 domestic manufacturers and importers of softwood lumber based on 2019 data. Of these, 1,000 entities, or 72 percent, shipped or imported less than 22.5 mmbf and would be considered small under the SBA definition. These 1,000 entities domestically manufactured or imported 3.25 billion board feet (bbf) in 2019, less than 5 percent of total volume.

While this action would increase the assessment obligation on domestic manufacturers and importers from $0.35 per mbf to $0.41 per mbf, the impact on these entities would be minimal and uniform. The current assessment rate of $0.35 per mbf represents 0.1 percent of the Random Lengths 2019 average framing lumber composite price of $356 per mbf. The proposed assessment rate of $0.41 per mbf is 0.12 percent of this price. The increase in assessment rate represents an increase in cost to domestic manufacturers and importers of two-thousandth of one percentage point relative to their average received price. This cost, though minimal, would also be offset by the benefits derived from the program.

The 1996 Farm Bill requires that Research and Promotion programs be evaluated every five years with the specific goal of measuring the economic impact of commodity promotion on demand for the commodity. The Board completed its first five-year evaluation of program effectiveness in 2016. The five-year evaluation, conducted by Prime Consulting, found that softwood lumber use per square foot increased nearly 23 percent among architects and structural engineers from the program's inception in 2011 to 2015. The evaluation also found a cumulative return on investment (ROI) of more than $15 in increased sales of softwood lumber per $1 spent on promotion by the program between 2012 and 2015. The cumulative ROI was updated in 2019 to reflect the time period of 2012 to 2018. The result was a return of more than $23 in increased sales per $1 spent on promotion.

This proposal invites comments on amending § 1217.52(b) to increase the assessment rate from $0.35 to $0.41 per

[1] SBA does have a small business size standard for ''Sawmills'' of 500 employees (see *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf*). Based on USDA's understanding of the lumber industry, using this criterion would be impractical as sawmills often use contractors rather than employees to operate and, therefore, many mills would fall under this criterion while being, in reality, a large business. Therefore, USDA used agricultural service firm as a more appropriate criterion for this analysis.

mbf. The Order is administered by the Board with oversight by the USDA. Under the program, assessments are collected from domestic manufacturers and importers and used for research and promotion projects designed to strengthen the position of softwood lumber in the marketplace. The additional funds collected at the proposed rate would enable the Board to maintain its existing programs, while supporting new programs that would help maintain and expand markets for softwood lumber. This proposal would also amend § 1217.52(h) to add the conversion factor for square meters to board feet and make one conforming change to section 1217.52(c) regarding voting requirements.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. This proposed rule would not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on domestic manufacturers and importers of softwood lumber.

As with all Federal promotion 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 proposed rule.

Regarding alternatives, the Board considered maintaining the current assessment rate. However, a majority of Board members determined that an increase was needed to adequately support existing programs and fund new initiatives. The Board discussed increasing the assessment at its meeting in November 2018, but after much consideration it determined it was not the right time for the industry to make such a recommendation. In 2019, with the reduction of assessment revenue and the program cuts that were made, the Board again considered the merits of increasing the assessment rate. This was discussed at several Board committee meetings, including meetings of the Executive Committee on September 17, 2019 and November 19, 2019, and the Finance Committee on November 19, 2019. The Board also considered rates of $0.39 and $0.50 per mbf. After much discussion at committee meetings and with the full Board, the Board recommended increasing the rate from $0.35 to $0.41 per mbf.

AMS has performed this initial RFA analysis regarding the impact of this proposed action on small entities and invites comments concerning potential effects of this action.

USDA has determined that this proposed rule is consistent with and would effectuate the purposes of the 1996 Act.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Softwood Lumber promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1217, is proposed to be amended as follows:

PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1217 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

§ 1217.52 [Amended]

■ 2. In § 1217.52, paragraphs (b), (c), and (h) are revised to read as follows:

§ 1217.52 Assessments.

* * * * *

(b) Subject to the exemptions specified in § 1217.53, each manufacturer for the U.S. market shall pay an assessment to the Board at the rate of $0.41 per thousand board feet of softwood lumber, except that no person shall pay an assessment on the first 15 million board feet of softwood lumber otherwise subject to assessment in a fiscal year. Domestic manufacturers shall pay assessments based on the volume of softwood lumber shipped within the United States and importers shall pay assessments based on the volume of softwood lumber imported to the United States.

(c) At least 24 months after the Order becomes effective and periodically thereafter, the Board shall review and may recommend to the Secretary, upon an affirmative vote by at least a majority of Board members plus two (exclusive of vacant seats), a change in the assessment rate. In no event may the rate be less than $0.35 per thousand board feet nor more than $0.50 per thousand board feet. A change in the assessment rate is subject to rulemaking by the Secretary.

* * * * *

(h) The HTSUS categories and assessment rates on imported softwood lumber are listed in the following table. The assessment rates are computed using the following conversion factors: one cubic meter (m3) equals 0.423776001 thousand board feet, and one square meter (m2) equals 0.010763104 thousand board feet. Accordingly, the assessment rate per cubic meter and square meter is as follows.

TABLE 1 TO PARAGRAPH (H)

Softwood lumber (by HTUS No.)	Assessment $/cubic meter	Assessment $/square meter
4407.11.00	0.1737	0.004412
4407.12.00	0.1737	0.004412
4407.19.05	0.1737	0.004412
4407.19.06	0.1737	0.004412
4407.19.10	0.1737	0.004412
4409.10.05	0.1737	0.004412
4409.10.10	0.1737	0.004412
4409.10.20	0.1737	0.004412
4409.10.90	0.1737	0.004412
4418.99.10	0.1737	0.004412

* * * * *

Bruce Summers,

Administrator.

[FR Doc. 2020–16554 Filed 8–12–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2020–BT–TP–0002]

RIN 1904–AE85

Energy Conservation Program: Test Procedure for Showerheads

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to amend the existing test procedure for showerheads to revise the definition of a showerhead consistent with the most recent standard developed by the American Society of Mechanical Engineers (''ASME'') in 2018. DOE's current definition considers all of the individual showerheads (which DOE has termed variously as sprays, openings, or nozzles) in a product containing multiple showerheads together for

purposes of compliance with the water conservation standard established in the Energy Policy and Conservation Act (''EPCA''). DOE proposes instead to define showerhead as that term is defined in the 2018 ASME standard, such that each showerhead in a product containing multiple showerheads would be considered separately for purposes of determining standards compliance, and only one of them would need to be turned on for testing. DOE has determined that the proposed definition is consistent with EPCA and, unlike the current definition, compliant with Office of Management and Budget (''OMB'') Circular A–119. In addition, the proposed definition is consistent with DOE's treatment of other products, such as body sprays. DOE also proposes to define the terms ''body spray'' and ''safety shower showerhead'' to clarify which products are not subject to the current energy conservation standard. DOE invites comment on all aspects of this proposal, and announces a public webinar to collect comments and data on its proposal.

DATES: Written comments and information are requested on all aspects of this proposal and will be accepted before and after the public meeting, but no later than September 14, 2020. See section IV, ''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–2020–BT–TP–0002, by any of the following methods:

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

(2) *Email: Showerheads2020TP0002@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.

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

(4) *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, SW, Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

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

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

The docket web page can be found at: *http://www.regulations.gov/docket?D=EERE-2020-BT-TP-0002.* The docket web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section IV of this document for information on how to submit comments through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@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 additional industry standards into 10 CFR part 430:

ASME A112.18.1–2012, ''Plumbing supply fittings,'' approved December 2012.

ASME A112.18.1–2018, ''Plumbing supply fittings,'' approved July 2018.

Copies of A112.18.1–2018 can be obtained from the American Society of Mechanical Engineers, 1828 L St., NW, Suite 510, Washington, DC 20036–5104; (800) 843–2763, or go to *https://www.asme.org/codes-standards/find-codes-standards/a112-18-1-csa-b125-1-plumbing-supply-fittings.*

See section III.N of this document for a more detailed discussion of this industry standard.

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I. Authority and Background

A. Authority

Title III of EPCA (42 U.S.C. 6291, *et seq.*) sets forth a variety of provisions designed to improve energy efficiency and, for certain products, water efficiency.[1] Part B of Title III, which for editorial reasons was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309, as codified), establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' which includes showerheads, the subject of this

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

proposed rulemaking. (42 U.S.C. 6292(a)(15))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The 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 and water conservation standards adopted under EPCA (42 U.S.C. 6295(s)), and (2) making 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 any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

EPCA states that the procedures for testing and measuring the water use of showerheads shall be ASME/ANSI [2] standard A112.18.1M–1989, ''Plumbing Fixture Fittings.'' EPCA further specifies that if ASME/ANSI revises these requirements, the Secretary shall adopt such revisions if they conform to the basic statutory requirements for test procedures. (42 U.S.C. 6293(b)(7)) The most recent version of the ASME/ANSI standard, A112.18.1M–2018, was adopted in 2018.

B. Background

EPCA defines a showerhead simply as ''any showerhead (including a handheld showerhead), except a safety shower showerhead.'' In addition to defining ''showerhead,'' EPCA established a maximum water use threshold of 2.5 gallons per minute (''gpm'') applicable to ''any showerhead.'' Both the definition of showerhead and the 2.5 gpm standard were added to EPCA by the Energy Policy Act of 1992 (Public Law 102–486; Oct. 24, 2991, ''EPAct 1992''). From 1992 to 2013, DOE regulations did not contain a separate definition of ''showerhead.''

DOE issued a notice of availability of a proposed interpretive rule relating to the definition of showerhead in May 2010. (75 FR 27926; May 19, 2010) In the proposed interpretive rule, available at *https://www.regulations.gov/document?D=EERE-2010-BT-NOA-0016-0002,* DOE noted that the design of showerheads had diversified into a myriad of products marketed under names such as waterfalls, shower towers, rainheads and shower systems. DOE intended the proposed interpretive rule to address ''uncertainty'' in how the EPCA definition of showerhead and the 2.5 gpm water conservation standard apply to such products. The proposed interpretive rule sought comment on DOE's proposed interpretation of the term ''showerhead'' to mean ''any plumbing fitting designed to direct water onto a bather,'' including a fitting that comprises a *set* of showerheads, as conventionally understood (*i.e.,* a set of accessories that each spray water onto a bather). Under this interpretation, the Department would find a ''showerhead'' (*i.e.,* a fitting comprising multiple showerheads) to be noncompliant with EPCA's maximum water use standard if the showerhead's standard spraying ''components,'' operating in their maximum design flow configuration and *when taken together,* use a total in excess of 2.5 gpm, even if each spraying component individually does not use an amount that exceeds 2.5 gpm. *Id.*

DOE did not finalize the proposed interpretive rule. Instead, DOE withdrew the draft interpretive rule from review by OMB and in 2011 issued enforcement guidance that achieved essentially the same result. (See *https://www.energy.gov/sites/prod/files/gcprod/documents/Showerhead_Guidancel.pdf*).[3] The Department stated in the enforcement guidance that multiple spraying components, when sold together as a single unit designed to spray water onto a single bather, constitute a single showerhead for purposes of compliance with the 2.5 gpm standard. The guidance did not apply to tub spouts, locker room showers, or emergency showers, or to handheld showers where the sprayer cannot run at the same time as the main nozzle. To determine whether a showerhead complied with the standard, DOE would measure a showerhead's water use by turning on all of the unit's sprays and nozzles to their maximum flow settings. *Id.* In issuing the guidance, DOE stated its view that the term ''any showerhead'' was sufficiently clear that no interpretive rule was needed. The Department also stated its view that this interpretation was consistent with both the industry standard incorporated into EPCA and the plain language and intent of Congress in establishing a maximum water use requirement for showerheads. Because manufacturers had developed the ''myriad of products'' referenced in the draft interpretive rule based on their ''apparent misunderstanding'' of how to measure compliance with the 2.5 gpm standard, however, DOE provided an enforcement grace period of 2 years from issuance of the guidance for manufacturers to sell any remaining non-compliant multi-nozzle products and adjust product designs to ensure compliance with the standard. *Id.*

DOE subsequently proposed to change its regulatory definition of showerhead as part of a proposed rule to revise the test procedures for showerheads and other products. (77 FR 31742, 31747–31748; 31755; May 30, 2012) In that proposed rule, DOE proposed to adopt definitions for the terms ''fitting'' and ''accessory'', as well as a definition of ''showerhead'' that used those terms. Under DOE's proposed definition, all components defined as an ''accessory,'' or a combined set of accessories, to a supply fitting represented a single covered product that would be required to meet the 2.5 gpm standard established in EPCA.

Specifically, DOE proposed to define an ''accessory'', with respect to plumbing fittings, as a component that can, at the discretion of the user, be readily added, removed or replaced. Removal of the accessory will not prevent the fitting from fulfilling its primary function. (77 FR 31742, 31755) DOE proposed to define a ''fitting'' as a device that controls and guides the flow of water. *Id.* These definitions were consistent with the ASME definition current at that time, ASME A112–18.1–2011. DOE also proposed to define a ''showerhead''; however, it defined that term in a manner different from the ASME definition. Specifically, the ASME standard defined ''showerhead'' as ''an accessory to a supply fitting for spraying water onto a bather, typically from an overhead position.'' DOE proposed to define a showerhead as ''an accessory, or set of accessories, to a supply fitting distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position.'' *Id.* DOE stated that the definition included body sprays and hand-held showerheads but did not include safety showerheads.[4]

In response to comments on the proposed rule, DOE issued a supplemental notice of proposed rulemaking (''SNOPR'') to revise the definitions of showerhead and hand-held showerhead and to remove body sprays from the definition of

[2] ''ANSI'' refers to the American National Standards Institute. *See also* 42 U.S.C. 6291(31)(C).

[3] The 2011 guidance was superseded by the October 2013 final rule described below. This proposed rule would supersede the 2013 final rule by providing for a different interpretation of the term ''showerhead'' as defined in EPCA.

[4] DOE proposed to define ''body spray'' as a shower device for spraying water onto a bather from other than the overhead position. DOE proposed to define a ''hand-held showerhead'' as a showerhead that can be fixed in place or used as a movable accessory for directing water onto a bather.

showerhead. (78 FR 20832, 20834–28835, 20841; Apr. 8, 2013; ''April 2013 SNOPR'') Specifically, Kohler Company (''Kohler'') and Sloan Valve Company (''Sloan Valve'') responded to the proposal by recommending that DOE use the definition of showerhead in ASME A112.18.1–2011. The Natural Resources Defense Council (''NRDC'') commented that a showerhead should not be defined as an accessory, and both NRDC and the International Code Council supported including body sprays in the DOE definition. These comments were contrary to comments from the Plumbing Manufacturers International (''PMI''), Moen Incorporated (''Moen'') and Kohler, who stated that body sprays should not be included or considered an accessory because they cannot be readily added or removed by the user. *Id.* at 78 FR 20834–28835.

In the April 2013 SNOPR, DOE again declined to propose the ASME definition of showerhead. DOE reasoned that the ASME definition did not sufficiently address DOE's regulatory coverage, because it did not specifically include hand-held showerheads or exclude safety showerheads. DOE also revised its proposed definition of showerhead (and hand-held showerhead) so that the term ''accessory'' would not be included in the proposed definition. DOE instead proposed to use the undefined term ''component''. Specifically, DOE proposed to define showerhead as ''a component of a supply fitting, or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, including hand-held showerheads but excluding safety shower showerheads.'' (78 FR 20832, 20841; Apr. 8, 2013) DOE proposed that body sprays not be covered by the DOE definition of showerhead, stating that further study of the issue was needed before it could determine whether to include body sprays in the definition. (78 FR 20832, 20834–20835; Apr. 8, 2013) DOE also considered defining the term ''safety shower showerhead'' to address the question of which products qualify for exclusion from coverage under EPCA and DOE regulations. DOE noted that the Occupational Safety and Health Administration (''OSHA'') did not define the term, but that certain state regulatory requirements referenced ANSI standard Z358.1, Emergency Eyewash and Shower Equipment, which contains specific design and performance criteria that must be met, such as flow rate and accessibility. DOE stated that these criteria could help develop a definition of safety shower showerhead. *Id.*

Industry commenters on the April 2013 SNOPR, including Kohler, PMI, NSF International (''NSF''), the International Association of Plumbing and Mechanical Officials, Chicago Faucets, and Moen, stated that DOE should adopt the definition of showerhead in ASME A112.18.1. The majority of these commenters also supported DOE's proposal not to include body sprays within the definition of showerhead. NRDC, the Appliance Standards Awareness Project, and the California Energy Commission did not support removal of body sprays from the definition. These comments are described in DOE's final rule, published in October 2013. (78 FR 62970, 62973; Oct. 23, 2013, ''October 2013 final rule'')

After considering these comments, DOE issued a final rule in October 2013 adopting a slightly modified version of the definition set forth in the April 2013 SNOPR. Specifically, DOE defined showerhead in the October 2013 final rule as ''a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.'' (78 FR 62970, 62973, 62986; Oct. 23, 2013) DOE continued to include hand-held showerheads within the definition of showerhead. DOE excluded body sprays from the definition but did not finalize the definition of ''body spray'' set forth in the NOPR. DOE also declined to adopt a definition of ''safety shower showerhead'' to clarify those showerheads that EPCA had exempted from coverage.

II. Synopsis of the Notice of Proposed Rulemaking

In this proposed rule, DOE proposes to revisit its prior interpretation of the EPCA definition of showerhead and to interpret the term showerhead using the definition of the term in ASME A112.18.1–2018. DOE proposes to define showerhead as follows: ''Showerhead means any showerhead (including a handheld showerhead) other than a safety shower showerhead.'' This definition restates the statutory definition of ''showerhead,'' at 42 U.S.C. 6291(31)(D). DOE then proposes to include in its regulations its interpretation of the term ''showerhead'' to mean ''an accessory to a supply fitting for spraying water onto a bather, typically from an overhead position.'' This interpretation incorporates the ASME definition.

DOE believes that interpreting the term ''showerhead'' consistent with the ASME definition is more appropriate than DOE's previous interpretation of ''showerhead.'' As described in section II.A of this NOPR, DOE recognizes that the statutory definition of the term ''showerhead'' is ambiguous in key respects. Accordingly, to provide clarity to regulated entities and the public concerning what is meant by the term, DOE proposes to interpret the statutory term ''showerhead'' using the definition of ''showerhead'' in ASME A112.18.1–2018. The most current ASME standard continues to define a showerhead as it did in 2011—''an accessory to a supply fitting for spraying water onto a bather, typically from the overhead position.''

Under DOE's proposed definition, each showerhead included in a product with multiple showerheads would separately be required to meet the 2.5 gpm standard established in EPCA. As explained in the discussion that follows, DOE concludes that its proposed interpretation of the term ''showerhead'' is consistent with Congressional intent in establishing the EPCA definition of ''showerhead'' and the associated energy conservation standard. DOE's proposal is also consistent with the requirements of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, section 12(d), Mar. 7, 1996, 110 Stat. 783, *as amended by* Public Law 107–107, Div. A, Title XI, section 1115, Dec. 28, 2001, 115 Stat. 1241 (''NTTAA''), 15 U.S.C. 272 note, and the associated OMB Circular A–119, which directs Federal agencies to use voluntary consensus standards unless inconsistent with applicable law or otherwise impracticable.[5] In addition, DOE's proposal treats products with multiple showerheads in a manner that is

[5] Section 12(d) of the NTTAA provides that with one exception, all Federal agencies and departments shall use technical standards developed or adopted by voluntary consensus standards bodies (''voluntary consensus standards''), using such standards as a means to carry out policy objectives or activities determined by the agencies and departments. The statutory exception is that a Federal agency or department may elect to use other technical standards if using voluntary consensus standards is inconsistent with applicable law or otherwise impractical, and if the agency head submits to OMB an explanation of the reasons for using the alternative standards. *See* 15 U.S.C. 272 note. Section 6 of OMB Circular A–119, available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A119/revised_circular_a-119_as_of_1_22.pdf,* reiterates the requirement for Federal agencies to use voluntary consensus standards unless inconsistent with applicable law or otherwise impracticable, and to issue guidance for agency reporting to OMB when standards other than voluntary consensus standards are used.

consistent with DOE's treatment of similar products, such as body sprays.

DOE also proposes to define the terms ''body spray'' and ''safety shower showerhead'' so that it is clear that these products are not considered showerheads subject to DOE's test procedures and energy conservation standards.

A. The Term ''Showerhead'' in EPCA Is Ambiguous and Does Not Mandate DOE's Prior Interpretation

EPCA defines the term ''showerhead'' generically, and somewhat circularly, to ''mean[] any showerhead (including a handheld showerhead), except a safety shower showerhead.'' 42 U.S.C. 6291(31)(D). In a May 2010 draft interpretive rule, DOE stated that uncertainty existed in application of the EPCA definition of showerhead and the 2.5 gpm standard to the ''myriad of products'' marketed under names such as waterfalls, shower towers, rainheads and shower systems. These products had been designed, manufactured, and marketed with knowledge of, and in the 19 years since, the 1992 law that established a definition of showerhead and the applicable 2.5 gpm standard. Less than a year later, in March 2011, DOE published enforcement guidance defining the term showerhead in a manner that deviated significantly from the ASME definition by determining that products with multiple showerheads constitute only one showerhead for purposes of EPCA. In the enforcement guidance, DOE further stated that the term ''any showerhead'' in EPCA was ''sufficiently clear such that no interpretive rule was needed''. DOE reached this conclusion despite DOE's statements in its 2010 draft interpretive rule about a lack of clarity and the development of the market since enactment of the 1992 definition of showerhead. Also despite the supposed clarity in the definition, DOE provided a two year grace period for manufacturers to sell products that the enforcement guidance in effect rendered noncompliant with the standard. DOE's October 2013 final rule then codified in its regulations the showerhead definition set forth in the 2011 enforcement guidance, rendering the guidance unnecessary. Following these developments, the number of multi-headed showerheads in the market decreased significantly from the ''myriad of products'' cited by DOE in 2010.

A number of considerations support the conclusion that the term ''showerhead'' in EPCA is ambiguous: (1) DOE's own statements in the May 2010 draft interpretive rule; (2) the long-standing existence of waterfalls, shower towers and similar products on the market; and (3) the two-year grace period DOE provided in the enforcement guidance in recognition of these products. In short, the unadorned statutory definition does not require that the term be construed as DOE had interpreted the term in the 2011 guidance and the October 2013 final rule.

Moreover, the text of the statutory definition itself, in one respect, seems difficult to square with the interpretation set forth in the 2011 guidance and the 2013 final rule. The statute defines the term to ''mean[] any showerhead (*including a handheld showerhead*), except a safety shower showerhead.'' (Emphasis added.) As a general matter, handheld showerheads are not multiple spraying accessories (or ''components,'' to use the language of the 2011 guidance and the 2013 rule) but are individual spraying accessories (or ''components''). This is an important consideration weighing in favor of DOE's proposed interpretation, and a reason why DOE believes that this interpretation is more appropriate than the alternative set forth in the 2011 guidance and the 2013 final rule. Indeed, assuming arguendo that the term ''showerhead'' is not ambiguous, DOE proposes to conclude in the alternative that the proposed interpretation set forth herein is the appropriate and correct interpretation of the term. At all events, DOE has authority under the statute to adopt the proposed interpretation.

B. DOE's Current Definition of Showerhead With Regard to EPCA and the ASME Standard

The Energy Policy Act of 1992 illustrated Congress' intent that DOE adhere to ASME standards. When EPCA was amended in 1992 to define showerhead and to establish a test method and water conservation standard for showerheads, Congress specified that the test method applicable to showerheads is the procedure specified in ASME A112.18.1M–1989. (42 U.S.C. 6293(b)(7)(A)) If that ASME standard is revised and approved by ANSI, DOE is required to amend its test procedures to conform to those revisions unless doing so would be inconsistent with other provisions of EPCA. (42 U.S.C. 6293(b)(7)(B)) In the definition section, immediately preceding the definition of showerhead, Congress also included definitions of ASME and ANSI. 42 U.S.C. 6291(31)(B)–(C). The 2.5 gpm standard required compliance with ASME/ANSI A112.18.1M–1989 with regard to the amount of force needed to remove the flow restrictor from the showerhead. (42 U.S.C. 6295(j)(1)) Even the marking and labeling requirements are required to be consistent with those of ASME A112.18.1M–1989, or a subsequently revised version as appropriate. 42 U.S.C. 6294(a)(2)(E).

Despite Congressional reliance on the ASME standard in developing the provisions of EPAct 1992 with regard to showerheads and direction for DOE to adopt updates to the ASME standard, when DOE established the current definition of ''showerhead,'' it deviated significantly from the ASME definition by determining that products with multiple showerheads constitute only one showerhead for purposes of EPCA. The current DOE regulatory definition of ''showerhead'' went beyond the ASME concept of what a showerhead is without any explanation as to why DOE was not following the statutory construct based on ASME. While water conservation is obviously a purpose of EPCA, DOE did not take into account congressional reliance on the ASME standard when DOE determined in its 2011 enforcement guidance what was meant by the term showerhead. While it is true that the ASME standard did not specifically define the term ''showerhead'' when EPCA was amended in 1992, commenters on DOE's draft interpretive rule and its proposed and supplemental rulemakings made abundantly clear that DOE was going beyond ASME's concept of that term. Moreover, products available on the market between 1992 and issuance of DOE's 2011 enforcement guidance included those with multiple water outlets manufactured to comply with statutory water efficiency standards construed as applying to individual spraying accessories (not to sets of such accessories), suggesting substantial industry reliance on the understanding that this was the appropriate construction of the statutory definition. Given EPCA's reliance on the ASME standard in amending EPCA to prescribe a definition, test procedure, energy conservation standard, and labeling provisions for showerheads, DOE concludes that if Congress had intended to significantly deviate from the ASME definition of what constitutes a showerhead, it would have done so explicitly. It did not. DOE is therefore entitled to give significant weight to the ASME definition in construing and applying the statutory standard, even if DOE is not required to adhere to the ASME definition.

In its prior rulemaking to establish a definition of ''showerhead'', DOE proposed to adopt a new definition for

the term that it stated was based on the definition included in ASME/ANSI A112.18.1–2011. 77 FR 31747 (May 30, 2012, ''May 2012 NOPR''). DOE proposed definitions of ''accessory'' and ''fitting'' that were the same as the ASME definitions. In proposing the definition of ''showerhead'', however, DOE went beyond the ASME definition of ''showerhead.'' The ASME standard defined, and continues to define, a ''showerhead'' as ''an accessory to a supply fitting for spraying water onto a bather, typically from an overhead position.'' DOE's proposal included the terms ''or set of accessories'' and ''distributed in commerce for attachment to a single'' supply fitting. DOE expanded the ASME definition not only, as required by EPCA, to include handheld showerheads and exclude safety shower showerheads (which it did not propose to define), but also to ''more clearly define the extent of DOE's coverage for these products''—in other words, to ensure that products with multiple showerheads would be considered a single showerhead for purposes of compliance with the DOE standard, as well as to include body sprays as showerheads. (77 FR 31742, 31747–13748; May 30, 2012)

In response to comments urging DOE to adopt the definition in the industry standard, DOE noted in the April 2013 SNOPR only that the ASME definition did not sufficiently address DOE's regulatory coverage of showerheads to include hand-held showerheads and exclude safety showerheads. (78 FR 20832, 20834; Apr. 8, 2013). DOE did not reference the fact that the ASME definition did not include ''set of accessories'' or ''distributed in commerce for attachment to a single'' supply fitting, terms that DOE used to classify products with multiple showerheads as a single showerhead for purposes of compliance with the 2.5 gpm standard. In the April 2013 SNOPR, DOE also proposed not to include body sprays as showerheads pending further investigation of the issue. DOE further proposed to eliminate use of the standard term ''accessory'' in favor of the undefined term ''component''. DOE did not offer an explanation for this change, other than that it was in response to comments. *Id.* Comments suggesting that DOE not define a showerhead as an accessory indicated that to do so would distinguish body sprays from showerheads and would lead DOE to exclude body sprays from coverage. But an interest in retaining the ability to include body sprays within the regulatory definition of showerhead at some future time should not lead DOE to depart from the term ''accessory'' that had been, and continues to be, used consistently in the ASME definition. Similarly, DOE now recognizes that defining products with multiple showerheads to constitute a single ''showerhead'' inappropriately expands the definition of ''showerhead'' beyond the ASME definition.

In the October 2013 final rule, DOE did not adopt the ASME definition and instead adopted a definition of showerhead with minor changes from that proposed in the April 2013 SNOPR. The definition continued to use the terms ''component'', ''set of components'', and ''distributed in commerce for attachment to a single'' supply fitting to ensure that products with multiple showerheads would be considered a single showerhead for purposes of compliance with the 2.5 gpm standard. DOE did not, however, adopt a definition of body spray and did not specifically include body sprays within the definition of ''showerhead''. Presumably, this meant that body sprays were not included as showerheads, though the Department's discussion of this point stated only that DOE was not adopting a definition of the term. (78 FR 62970, 62972–62973; Oct. 23, 2013) DOE also did not adopt a definition of ''safety shower showerhead'', so the products specifically exempted by Congress remained undefined and subject to DOE's discretion as to what it determined was a safety shower showerhead. *Id.*

The definition of showerhead adopted by the Department in the October 2013 final rule did not reference the purpose of water conservation, and it was also inconsistent with the ASME standard upon which Congress relied heavily in establishing the definition, test procedures, energy conservation standard, and labeling requirements for showerheads. The current DOE definition—which uses the additional and undefined terms ''component,'' ''set of components'' and ''distributed in commerce for attachment to a single'' supply fitting to include as one showerhead a product with multiple showerheads—is also inconsistent with the requirements of the NTTAA (section 12(d)) and the associated OMB Circular A–119 (available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A119/revised_circular_a-119_as_of_1_22.pdf*). As explained previously at the beginning of Section II, the NTTAA and OMB's Circular A–119 direct that Federal agencies use voluntary consensus standards unless inconsistent with applicable law or otherwise impracticable.[6]

While Congress did not specifically direct DOE to define showerhead according to the ASME standard, Congress relied on the ASME standard in all of the provisions by which it included showerheads within the scope of DOE's authority—definitions, where Congress specifically defined both ASME and ANSI directly preceding and in the same paragraph as the definition of showerhead, test procedures, labeling requirements and the applicable energy conservation standard. That reliance further suggests that DOE should have considered the directives of the NTTAA and OMB Circular A–119 with regard to the use of voluntary consensus standards in developing its definition. EPCA certainly does not preclude DOE from using such standards; the statutory text of EPCA does not make compliance with the NTTAA, and compliance with OMB Circular A–119, either inconsistent with applicable law or otherwise impracticable.

The Department did not provide discussion of the NTTAA and OMB Circular A–119 in any of its rulemaking documents in support of its decision not to adopt the voluntary consensus standard developed by ASME. This omission may have been a result of DOE's prior conclusion that the term ''showerhead'' should be read to encompass products that constituted sets of individual showerheads (which it termed variously as sprays, openings or nozzles). However, DOE has reconsidered this issue and proposes to reach a different conclusion, as explained in this proposed rule.

As to practicability, DOE stated in the May 2012 NOPR only that the ASME standard did not clearly exclude safety shower showerheads (which DOE did not propose to define) or include body sprays, and that DOE modified the ASME definition to ''more clearly define the extent of DOE's coverage''. (77 FR 31742, 31747; May 30, 2012). DOE's failure to adopt the ASME definition does not appear to have been based on an appropriate analysis of practicability per the NTTAA and OMB Circular A–119.

C. DOE's Proposed Definition With Regard to EPCA and the ASME Standard

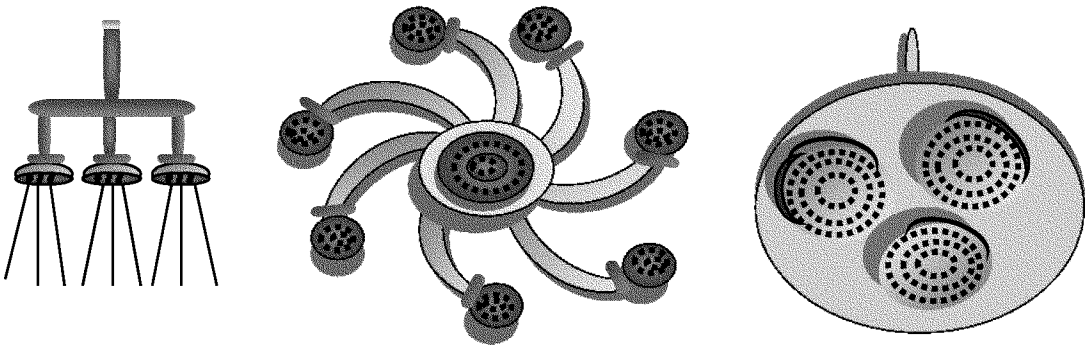
DOE proposes in this rulemaking to set forth in its regulatory text the definition of showerhead established in EPCA. In particular, DOE proposes to interpret the term using the definition in ASME A112.18.1–2018 (Section 3.1)—

[6] See fn 5, *supra.*

''an accessory to a supply fitting for spraying water onto a bather, typically from an overhead position.''

DOE's proposed definition is consistent with EPCA. DOE stated in its 2011 enforcement guidance that it could not ''reconcile the view that a showerhead with multiple nozzles is actually multiple showerheads with EPCA's language or intent'' and that (in a somewhat circular fashion) ''it has always been the Department's view that when Congress used the term 'any showerhead' it actually meant 'any showerhead'—and that a showerhead with multiple nozzles constitutes a single showerhead for purposes of EPCA's water conservation standard.'' *See* Showerhead Enforcement Guidance at 1 (Mar. 4, 2011). *https://www.energy.gov/sites/prod/files/gcprod/documents/Showerhead_Guidancel.pdf.* The Department had, however, prior to the draft interpretive rule that preceded the enforcement guidance, never provided its view on what was meant by the term ''showerhead''. In addition, what the guidance had characterized as ''a showerhead with multiple nozzles'' could just as rationally, if not more so, be considered multiple showerheads. Looking at the depictions in Figure 1 (taken from page 1 of the 2011 enforcement guidance), a rational person might well have counted three, eight, and three showerheads, respectively, rather than simply one showerhead for each configuration.

Figure 1. Products with multiple individual showerheads.



And, while one of the purposes of EPCA is to ''conserve water by improving the water efficiency of certain plumbing products and appliances'' (42 U.S.C. 6201(8)), as noted in section II.B. of this NOPR, EPCA relied on the ASME standard for measuring the water use of showerheads at 42 U.S.C. 6293(b)(7) and included references to ASME and the ASME standard in the definitions related to showerhead at 42 U.S.C. 6291(31), the energy conservation standard at 42 U.S.C. 6295(j), and the labeling requirements at 42 U.S.C. 6294(a)(2)(E). Presumably, if Congress intended to establish a definition of the term ''showerhead'' significantly more expansive than that contemplated by ASME (which would have eliminated many products then manufactured by the industry), it would have done so explicitly.

DOE also concludes that by referencing the ASME standard in the statute as described in the preceding paragraph, and requiring DOE to update its test procedures in response to action by ASME, Congress was expressing an intent that DOE's actions with regard to showerheads be consistent with those of ASME. As described in section II.B of this NOPR, DOE's definition of showerhead adopted in 2013 was not consistent with ASME's definition in place at that time. Nor is it consistent with ASME's definition in ASME A112.18.1–2018, which was adopted by ASME subsequent to, and presumably with knowledge of, DOE's 2013 rulemaking. This proposal by DOE to harmonize its definition of ''showerhead'' with that of ASME is meant to ensure that DOE's regulations comport with congressional intent to rely on ASME's standards for specific water-using products, including showerheads.

In addition, EPCA was amended in 1987 to insert a provision into 42 U.S.C. 6295 prohibiting DOE from establishing a new or amended standard under this section if DOE finds that the standard is likely to result in the unavailability of performance characteristics, features, sizes, capacities and volumes substantially the same as those generally available in the U.S. at the time of the finding. See Public Law 1001–2 (Mar. 17. 1987); 42 U.S.C. 6295(o)(4). While DOE is prohibited from taking such an action, Congress can pass subsequent legislation that removes products with certain performance characteristics and features from the market, such as products with multiple showerheads. If Congress had intended to establish a provision in EPCA in 1992 that eliminated these products from the market, it would have done so explicitly given the 1987 amendment. Again, it did not. Nor did the 1992 EPCA provision impliedly repeal the 1987 amendment. *See, e.g., Morton* v. *Mancari,* 417 U.S. 535, 551 (1974) (repeals by implication are disfavored; ''when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective''), *cited in Epic Sys. Corp.* v. *Lewis,* 138 S. Ct. 1612, 1624 (2018).

It is clear that DOE cannot regulate or otherwise act to remove products with certain performance characteristics and features from the market given the prohibition in 42 U.S.C. 6295(o)(4). While DOE did not undertake a standards rulemaking to eliminate products with multiple showerheads, which can easily be viewed as a ''feature'' for purposes of the EPCA provision (for example, other aspects of products that DOE has identified as features include the window in an oven door and the top loading clothes washer configuration), such an elimination is exactly the outcome of DOE's 2011 enforcement guidance and 2013 regulatory interpretation of the term ''showerhead'' in EPCA. As discussed earlier in this document, the number of multi-headed showerheads in the market decreased significantly from the ''myriad of products'' cited by DOE in 2010.

Specifically, in its 2011 enforcement guidance, DOE stated that it interpreted

the term ''showerhead'' in EPCA such that each individual showerhead (alternatively called nozzles, sprays, or openings) in a product with multiple showerheads would need to be turned on for testing to determine compliance as measured by aggregating the water use of all showerheads in the product. As a result, DOE was authorized to take enforcement action against manufacturers of such products that exceed the 2.5 gpm maximum, as measured by aggregating the water use of all showerheads in a product, rather than by applying the 2.5 gpm requirement to each individual showerhead (*See https://www.energy.gov/sites/prod/files/gcprod/documents/Showerhead_Guidancel.pdf*). DOE acknowledged the existence on the market of these multi-showerhead products, reasoning, however, that it may have been the Department's failure to enforce the law for 19 years that led manufacturers to misunderstand the law. As a result, DOE gave manufacturers two years to sell any products that the Department deemed noncompliant. In issuing the 2011 enforcement guidance, it appears that DOE effectively banned the vast majority of products with multiple showerheads from the market. This action runs contrary to the current directives established for DOE by Executive Order 13891, ''Promoting the Rule of Law Through Improved Agency Guidance Documents'', issued on Oct. 9, 2019. (84 FR 55235; Oct. 15, 2019). Following issuance of the 2011 enforcement guidance, DOE engaged in a rulemaking to define ''showerhead'' in a manner that would codify in DOE regulations its effective ban on products with multiple showerheads from the market. (78 FR 62970; Oct. 23, 2013) As an alternative argument for its proposal to change its interpretation of the term ''showerhead'' in this rulemaking, DOE proposes to conclude that EPCA's prohibition on the removal of product characteristics or features from the market through a standards rulemaking also rendered impermissible DOE's actions to effectively ban these products through a definition in a test procedure rulemaking.

For all of these reasons, considered singly and together, DOE proposes to conclude that its proposed interpretation of the term showerhead is more consistent with congressional intent in establishing the definition of the term ''showerhead'' and the associated energy conservation standard. DOE's proposed definition also complies with the congressional directive to preserve performance characteristics and features that were available on the market at the time the Department originally acted to eliminate them. DOE seeks data and information on any basic models or shipments of showerheads with multiple heads manufactured prior to issuance of DOE's 2011 enforcement guidance, or data and information on basic models or shipments of such showerheads currently on the market, or basic models that manufacturers may be planning to introduce.

DOE has also considered the requirements of the NTTAA and OMB Circular A–119 in developing its proposed definition. The NTTAA and OMB Circular A–119 require DOE (and all other Federal agencies) to use voluntary consensus standards in lieu of government-unique standards in their regulatory activities, except where inconsistent with law or otherwise impractical. (*See* Pub. L. 104–113, section 12(d), Mar. 7, 1996, 110 Stat. 783, *as amended by* Pub. L. 107–107, Div. A, Title XI, section 1115, Dec. 28, 2001, 115 Stat. 1241 (''NTTAA''), 15 U.S.C. 272 note *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A119/revised_circular_a-119_as_of_1_22.pdf*). As described earlier in this section, DOE has initially concluded that its proposed definition, which is the same as the ASME definition, is compliant with EPCA. DOE has also initially determined that it is practicable to adopt the ASME definition. The ASME definition is well understood by showerhead manufacturers. In addition, contrary to DOE's reasoning in the prior rulemaking, it is not necessary that the ASME definition specifically exclude safety showerheads, because EPCA already does so. In this rulemaking, DOE also proposes to define safety shower showerhead, so that it is clear what products are subject to the EPCA standard. It is also not necessary to explicitly include or exclude body sprays in the definition of showerhead. In the ASME standard, body spray is defined separately from showerhead, indicating that the two terms are different and that a body spray is not considered a showerhead. In this proposal, DOE similarly defines ''body spray'' separately from ''showerhead,'' to clarify that a body spray is not included within the definition of a showerhead. Thus, DOE concludes that it is practicable to define showerhead as it is defined in the voluntary consensus standard developed by ASME in ASME/ANSI A112.18–1–2018.

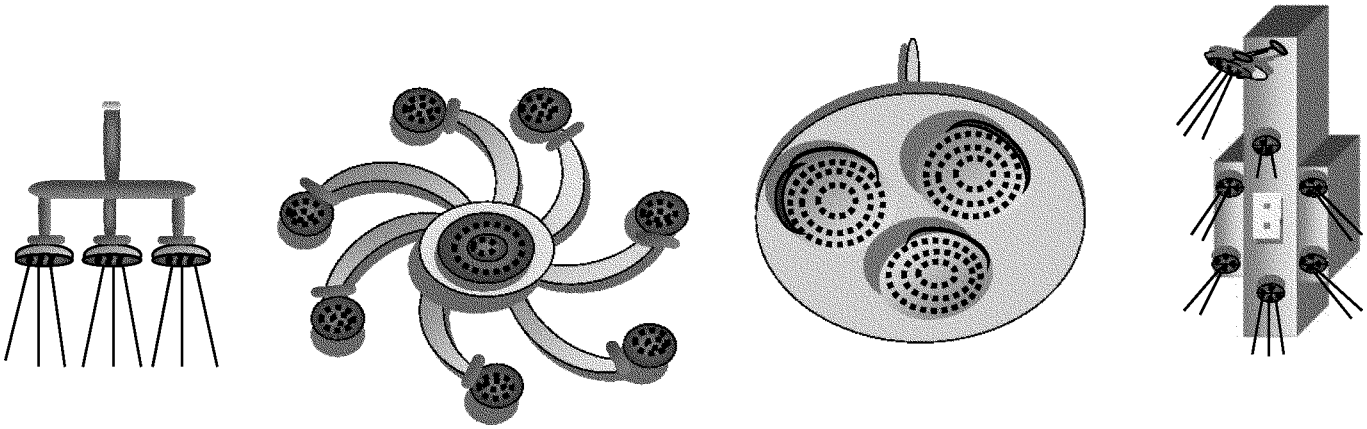
D. Discussion of the Proposed Rule With Regard to Consistency in Treatment of Related Products

In this proposal, DOE's regulations would specifically define the term ''body spray'' separately from the definition of showerhead, defining ''body spray'' as a ''shower device for spraying water onto a bather other than from the overhead position.'' Thus, DOE's regulations would make clear that body sprays are not covered by DOE's test procedure or the energy conservation standard applicable to showerheads. Doing so would be consistent with DOE's proposed interpretation of the term ''showerhead.''

This definition would be consistent with the current ASME standard, ASME A112.18.1–2018, which defines a body spray as a ''shower device for spraying water onto a bather other than from the overhead position.'' In DOE's May 2012 NOPR, DOE proposed to use this definition for the term ''body spray,'' and also proposed to include body sprays in the definition of showerhead. Industry commenters stated that body sprays were not accessories because they cannot be readily added or removed by the user. (78 FR 20832, 20834; Apr. 8, 2013). Some commenters expressed the view that showerheads should not be defined as ''accessories'' and that body sprays should be included in the definition of showerhead. *Id.* As a result of these comments, DOE proposed in a supplemental proposal and ultimately finalized a definition of showerhead that used the term ''component'' rather than ''accessory''. While DOE did not define ''body spray'' in the final test procedure rule, the definition of ''showerhead''—unlike the May 2012 NOPR—did not specifically include (or exclude) body sprays. This omission may have introduced uncertainty for regulated parties.

DOE believes that it is appropriate to clarify explicitly that body sprays are not showerheads. As illustrated in Figure II (where the product at the far right represents a body spray), products with multiple showerheads are more akin to body sprays because of the multiple nozzles that each product has, regardless of the overhead configuration. DOE has determined that its proposed definition, which considers each showerhead in a product with multiple showerheads as a showerhead for purposes of standards compliance, is more consistent with its previous (and current) treatment of body sprays, which are not included in its regulatory definition of showerhead.

Figure II. Products with multiple individual showerheads and a body spray (far right).



DOE notes that the October 2013 final rule establishing the definition for showerhead did not define body spray, leaving it to the Department's discretion to determine whether a given product was required to comply with the standard. In this proposed rule, DOE requests comment on its proposal to include in its regulations the definition of body spray originally presented in the May 2012 NOPR and contained within the current ASME definition—''a shower device for spraying water onto a bather other than from the overhead position.'' The ASME standard gives an example of a device mounted on a wall below the bather's head that sprays water in an approximately horizontal direction and can be fixed or allowed to swivel on a ball joint. (ASME A112.18.1–2018, Section 3.1). Under this proposal, DOE's regulations would specifically define body sprays separately from the definition of showerhead, so as to explicitly provide that body sprays are not covered by DOE's test procedure or the energy conservation standard applicable to showerheads.

E. Current Proposal and the Definition of ''Safety Shower Showerhead''

In this rulemaking, DOE proposes to adopt the following ANSI standard as the definition of ''safety shower showerhead'': ''a device specifically designed and intended to deliver a flushing fluid in sufficient volume to cause that fluid to cascade over the entire body.'' Defining this term is important, because the statute provides that ''[t]he term ''showerhead'' means any showerhead (including a handheld showerhead), except a safety shower showerhead.'' 42 U.S.C. 6291(31)(D).

In DOE's October 2013 final rule establishing the current definition of ''showerhead'', DOE declined to define the term ''safety shower showerhead,'' which meant that the class of showerheads that EPCA excluded from standards was undefined and subject to DOE's discretion as to what was considered a safety shower showerhead. DOE noted in the October 2013 final rule that ANSI standard Z358.1, ''Emergency Eyewash and Shower Equipment'', defines an emergency shower as ''a device specifically designed and intended to deliver a flushing fluid in sufficient volume to cause that fluid to cascade over the entire body.'' 78 FR 62970, 62974; Oct. 23, 2013. Commenters, including NSF and PMI, supported inclusion of the definition of safety shower showerhead consistent with the requirements of ANSI standard Z358.1. At the time, DOE declined to adopt this definition, stating that DOE could not identify a definition that would clearly distinguish these products from showerheads covered under EPCA and that adopting an unclear definition would cause additional confusion. *Id.* Upon further reflection, DOE is of the view that leaving the scope of products not subject to EPCA's energy conservation standards undefined, and potentially subjecting manufacturers of safety shower showerheads to DOE standards, causes more confusion than establishing a regulatory definition consistent with the existing ANSI standard. What is meant by a ''safety shower showerhead'' or emergency shower is understood in the regulated industry, and DOE believes that it is unlikely that manufacturers of showerheads intended for use by residential consumers would design a showerhead to meet the specifications of the ANSI standard to avoid compliance with DOE standards.

DOE seeks comment on its proposal to adopt the ANSI standard as the definition of ''safety shower showerhead'', whether there is currently uncertainty regarding which products are ''safety shower showerheads'', and whether that definition would provide clarity as to those showerheads that are not subject to the DOE standard.

F. Testing Requirements

DOE proposes amendments to the testing provisions at 10 CFR part 430, subpart B, appendix S to address the testing of a single showerhead in a product with multiple showerheads. A measurement would be required for only one showerhead when all showerheads in the product are identical. If the showerheads in such a product are not identical, only the showerhead with the maximum water flow would need to be tested to determine compliance with the 2.5 gpm standard. Additionally, DOE proposes to specify that where it is not possible to turn on only the showerhead being tested, testing would be performed with all showerheads flowing at the maximum rate. Measurement would be taken of only the showerhead under test.

DOE emphasizes that if an existing product manufactured pursuant to DOE's current definition of showerheads is compliant with the 2.5 gpm standard, that product would remain compliant under the definition of showerhead in this proposed rule, if finalized. Specifically, if a product with multiple showerheads currently available is compliant with the 2.5 gpm standard when considering all showerheads together, it must be the

case that each individual showerhead is compliant separately with the standard. Because DOE's focus is standards compliance, should DOE finalize this proposal, manufacturers would not be required to retest and recertify that product, and could continue to report the same flow rate to DOE that they report currently for purposes of demonstrating compliance with the standard. DOE may consider whether updates to its certification regulations at part 429 are appropriate if it were to finalize the definitional change in this proposed rule.

According to data in DOE's certification database (CCMS database, as of March 2020, there are 7,221 basic models of showerheads. Of those, DOE estimates that only 3% are multi-head showerheads. For 97 percent of showerheads currently on the market, testing requirements would not change. For the very small percentage of remaining products that do have more than one showerhead, and any new products manufactured with more than one showerhead, the testing requirement would still be to test the flow rate pursuant to section 5.4 of the ASME standard, but instead of measuring the flow from all of the showerheads or outlets, the flow rate of only one of these would be measured. In other words, the same test would be performed, but the water from only one showerhead would be measured to determine compliance with the DOE water conservation standard.

III. 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). The definitional change in this rule is not expected to have a material impact on costs. Similarly, the proposed rule is expected to result in minimal increase in benefits, primarily through clarifying the showerhead definition.

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.'' 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.'' 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.

For the reasons stated in the preamble, DOE has preliminarily determined that this action is a deregulatory action for purposes of E.O. 13771.

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 would amend the definition of showerhead such that each showerhead in a product with multiple showerheads would constitute a single showerhead for purposes of compliance with the 2.5 gpm standard. The proposal would also specifically define and exclude body sprays and safety shower showerheads from the regulatory definition of showerhead. As explained in section II of this proposed rule, DOE does not expect a change in the test burden as a result of this proposed rule, if adopted. Specifically, the same test would be performed, but the water from only one showerhead would be measured to determine compliance with the DOE water conservation standard. The updates to the testing procedures maintain the current testing requirement that only one showerhead per product would need to be tested, and current products with multiple showerheads that meet the energy conservation standard would not need to be retested. Based on the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

D. Review Under the Paperwork Reduction Act of 1995

Manufacturers of showerheads 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 showerheads. (See generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is 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 30 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 reinterpret the definition of ''showerhead'' and revise the test procedure for measuring the energy efficiency of showerheads is 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 (Pub. L. 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 showerheads in this proposed rule incorporate definitions and testing methods contained in certain sections of the following commercial standards: ASME A112.18.1–2018, ''Plumbing supply fittings.'' DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was 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 standards published by ASME, ASME A112.18.1–2012, Plumbing supply fittings (approved December 2012), and ASME A112.18.1–2018, Plumbing supply fittings (approved July 2018).

The proposed amendments in this proposed rulemaking include updating the reference to ASME A112.18.1–2012 to incorporate by reference the standard in its entirety. Currently, only section 5.4 of ASME A112.18.1–2012 is incorporated by reference at 10 CFR 430.3. ASME A112.18.1–2012 is an industry standard that contains performance guidelines and test procedures, and is intended to cover plumbing supply fittings and accessories between the supply stop and terminal fitting, including showerheads. This proposed rule would continue to reference Section 5.4, ''Flow rate'' of ASME A112.18.1–2012 in the test procedure for faucets.

The proposed amendments in this proposed rule include updating references to the definition of showerhead in ASME A112.18.1–2018. ASME A112.18.1–2018 is a more current version of A112.18.1–2012 and remains an industry standard that contains performance guidelines and test procedures, and is intended to cover plumbing supply fittings and accessories between the supply stop and terminal fitting, including showerheads. Specifically, the test procedures for showerheads as defined in this proposed rule would reference Section 5.4, ''Flow rate'' of ASME A112.18.1–2018.

Copies of both ASME A112.18.1–2012 and ASME A112.18.1–2018 may be purchased from the American Society of Mechanical Engineers, 1828 L St. NW, Suite 510, Washington, DC 20036–5104; (800) 843–2763, or by going to *https://www.asme.org/codes-standards/find-codes-standards/a112-18-1-csa-b125-1-plumbing-supply-fittings* and selecting the appropriate Edition (2012 or 2018).

IV. Public Participation

DOE invites comment on all aspects of this proposal. 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. 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. 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 *Showerheads2020TP0002@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).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 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 July 16, 2020, by Daniel R Simmons, Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 16, 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 part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by adding, in alphabetical order, definitions for ''Body spray'' and ''Safety shower showerhead,'' and by revising the definition of ''Showerhead'' to read as follows:

§ 430.2 Definitions.

* * * * *

Body spray means a shower device for spraying water onto a bather from other than the overhead position. A body spray is not a showerhead.

* * * * *

Safety shower showerhead means a device specifically designed and intended to deliver a flushing fluid in sufficient volume to cause that fluid to cascade over the entire body.

* * * * *

Showerhead means any showerhead (including a handheld showerhead) other than a safety shower showerhead. DOE interprets the term ''showerhead'' to mean an accessory to a supply fitting for spraying water onto a bather, typically from an overhead position.

* * * * *

■ 3. Section 430.3 is amended by:

■ a. Revising paragraph (h)(1);

■ a. Redesignating paragraph (h)(2) as paragraph (h)(3); and

■ b. Adding new paragraph (h)(2).

The revision and addition read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(h) * * *

(1) ASME A112.18.1–2012, (''ASME A112.18.1–2012''), ''Plumbing supply fittings,'' approved December, 2012, IBR approved for appendix S to subpart B.

(2) ASME A112.18.1–2018, (''ASME A112.18.1–2018''), ''Plumbing supply fittings,'' approved July 2018, IBR approved for appendix S to subpart B.

* * * * *

■ 4. Appendix S to subpart B of part 430 is amended by:

■ a. Removing the note after the appendix heading;

■ b. Adding section 0, ''Incorporation by Reference''; and

■ c. Revising section 2.b, ''Flow Capacity Requirements''.

The addition and revision read as follows:

Appendix S to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Faucets and Showerheads

Section 0. Incorporation by Reference

DOE incorporated by reference ASME A112.18.1–2012 and ASME A112.18.1–2018

in their entirety in § 430.3; however, only enumerated provisions of these documents are applicable to this appendix, as follows:

(a) ASME A112.18.1–2012, Plumbing supply fittings, section 5.4, Flow rate,'' as specified in section 2.a. of this appendix.

(b) ASME A112.18.1–2018, Plumbing supply fittings, section 5.4, Flow rate,'' as specified in section 2.b. of this appendix.

* * * * *

2. * * *

* * * * *

b. *Showerheads*—(1) The test procedures to measure the water flow rate for showerheads, expressed in gallons per minute (gpm) and liters per minute (L/min), shall be conducted in accordance with the test requirements specified in section 5.4, Flow Rate, of ASME A112.18.1–2018 (incorporated by reference, *see* § 430.3). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value shall be rounded to one decimal place. If the time/volume method of section 5.4.2.2(d) is used, the container must be positioned as to collect all water flowing from the showerhead, including any leakage from the ball joint.

(2) For products with multiple showerheads, test one showerhead if each showerhead has an identical flow control mechanism attached to or installed within the supply fitting and identical water-passage design features that use the same path of water in the highest flow mode. If all showerheads are not identical, test the showerhead with the maximum water flow rate. Where it is not possible to isolate the showerhead under test, test with all showerheads flowing at the maximum rate and measure the flow rate of only the showerhead under test.

[FR Doc. 2020–15749 Filed 8–12–20; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2020–BT–STD–0001]

RIN 1904–AE86

Energy Conservation Program: Energy Conservation Standards for Clothes Washers and Clothes Dryers

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential clothes washers and consumer clothes dryers. In this notice of proposed rulemaking (''NOPR''), the Department of Energy (DOE) proposes to establish separate product classes for top-loading residential clothes washers and consumer clothes dryers that offer cycle times for a normal cycle of less than 30 minutes, and for front-loading residential clothes washers that offer cycle times for a normal cycle of less than 45 minutes. DOE would consider appropriate energy and water efficiency standards for such product classes, if adopted, in separate rulemakings.

DATES: Written comments, data, and information regarding this NOPR will be accepted on or before September 14, 2020.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2020–BT–STD–0001, by any of the following methods:

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

(2) *Email: ConsumerWashersDryers 2020STD0001@ee.doe.gov.* Include the docket number EERE–2017–BT–STD–0001 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 for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *http://www.regulations.gov.* All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *http://www.regulations.gov/#!docket Detail;D=EERE-2020-BT-STD-0001.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V 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. Email: *Appliance StandardsQuestions@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–6111. Email: *Jennifer.Tiedeman@hq.doe.gov.*

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

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I. Background

A. Consumer (Residential) Clothes Washers and Clothes Dryers

The Energy Policy and Conservation Act, as amended (''EPCA''),[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 of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include consumer (residential) clothes washers and clothes dryers, the subject of this document. (42 U.S.C. 6292(a)(7) and (8)) EPCA prescribed energy conservation standards for these products, and directed DOE to conduct a series of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(g)(2), (3), and (4)(A) and (B))

DOE completed the additional rulemakings for residential clothes washers with the publication of a direct final rule on May 31, 2012 (''May 2012 final rule''). 77 FR 32308. DOE completed the additional rulemakings for consumer clothes dryers by publishing a direct final rule on April 21, 2011, which amended the energy conservation standards for consumer clothes dryers. 76 FR 22454; 76 FR 52852 (Aug. 24, 2011).

EPCA directs that when prescribing an energy conservation standard for a type (or class) of a covered product, DOE must specify—

[A] Level of energy use or efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if DOE determines that covered products within such a group—

(A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or

(B) Have a capacity or other such performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type.

In making a determination concerning whether a performance-related feature justifies the establishment of a higher or lower standard, DOE must consider such factors as the utility to the consumer of such a feature, and such other factors as DOE deems appropriate. (42 U.S.C. 6295(q)(1))

The current energy conservation standards establish four product classes for residential clothes washers by distinguishing between products on the basis of both clothing container capacity and axis of loading. 10 CFR 430.32(g)(4). A *standard* clothes washer has a clothing container capacity greater than or equal to 1.6 cubic feet (ft^3), while a *compact* clothes washer has a clothing container capacity less than 1.6 ft^3. Axis of loading is differentiated by *top-loading* or *front-loading. Id.*

For consumer clothes dryers, the current energy conservation standards define six product classes, differentiated by the following characteristics: fuel source (*electric* or *gas*), venting configuration (*vented* or *ventless*), drum capacity (*standard* (greater than or equal to 4.4 ft^3) or *compact* (less than 4.4 ft^3)), integration with a clothes washer (*combination washer-dryer*), and for electric compact clothes dryers, voltage (*120 V* or *240 V*). 10 CFR 430.32(h)(3).

B. Cycle Time Considerations for Appliance Standards

On March 21, 2018, the Competitive Enterprise Institute (''CEI'') petitioned DOE to initiate a rulemaking to define a new product class under 42 U.S.C. 6295(q) for residential dishwashers.[2] The new product class would cover dishwashers with a cycle time for a normal cycle of less than one hour from washing through drying. CEI stated that dishwasher cycle times have become dramatically longer under existing DOE energy conservation standards, and that consumer satisfaction/utility has dropped as a result of these longer cycle times. CEI also provided data regarding the increase in dishwasher cycle time, including data that correlated increased cycle time with DOE's adoption of amended efficiency standards for dishwashers.

Based upon its evaluation of the CEI petition and consideration of the public comments received in response to the notice of petition published in the **Federal Register** on April 24, 2018 (83 FR 17768), DOE granted the petition for rulemaking and proposed a dishwasher product class with a cycle time for the normal cycle of less than one hour. 84 FR 33869 (July 16, 2019). In that proposed rule DOE reiterated its prior conclusion with respect to commercial clothes washers that ''the longer average cycle time of front-loading machines warrants consideration of separate [product] classes.'' 79 FR 74492, 74498 (Sept. 15, 2014). Further, DOE stated its position that, similar to commercial clothes washers, cycle time for dishwashers is a performance-related feature for purposes of 6295(q) that justifies a higher or lower standard than that applicable to other dishwasher product classes.

Consumer use of residential clothes washers and consumer clothes dryers is similar to that of residential dishwashers (*i.e.,* the products provide consumer utility over discrete cycles with programmed cycle times, and consumers run these cycles multiple times per week on average). In Section II of this NOPR, DOE presents cycle time data that DOE has gathered in support of its proposal to establish separate product classes for residential clothes washers and consumer clothes dryers to preserve a performance-related feature of both residential clothes washers and consumer clothes dryers (*i.e.,* the consumer utility of a short cycle time).

II. General Discussion

A. Legal Authority

Consistent with the analysis presented in the proposed rulemaking to establish a new dishwasher product class (84 FR 33869, 33871–33873; July 16, 2019), DOE has concluded it has legal authority pursuant to 42 U.S.C. 6295(q) to establish separate product classes for residential clothes washers and consumer clothes dryers.

As explained in the dishwasher NOPR, DOE has taken the view in numerous prior rulemakings (cited and discussed in this paragraph and the next few paragraphs) that consumer utility is an aspect of the product that is accessible to the layperson and based on user operation, rather than performing a theoretical function. This interpretation has been implemented in DOE's previous determinations of utility through the value the particular feature brings to the consumer, rather than through analyzing more complicated design features or costs that anyone, including the consumer, manufacturer, installer, or utility companies may bear. DOE has determined that this approach is consistent with EPCA's requirement for a separate and extensive analysis of economic justification for the adoption of any new or amended energy conservation standard. *See, e.g.,* discussion in DOE's proposed rule and

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

[2] The petition for rulemaking, attachments, and data submitted by CEI are available in docket number EERE–2018–BT–STD–0005 at *http://www.regulations.gov.*

supplemental proposed rule to establish amended energy conservation standards for furnaces at 80 FR 13120, 13137 (Mar. 12, 2015); 81 FR 65720, 65752–65755 (Sept. 23, 2016). Under this approach, DOE determined that the window in an oven door was a ''feature'' justifying a different standard.[3] Similarly, DOE also determined that consumers may value other features such as the ability to self-clean,[4] size,[5] and configuration.[6] In contrast, DOE determined that water heaters using electric resistance technology did not merit a product class separate from water heaters using heat pump technology.[7] In both heat-pump and electric storage water heaters, the same utility to the consumer (*i.e.,* hot water) was provided by units using different technology.

In a rulemaking to amend standards applicable to commercial clothes washers, DOE determined that the ''axis of loading'' constituted a feature that justified separate product classes for top-loading and front-loading clothes washers. DOE also determined that ''the longer average cycle time of front-loading machines warrants consideration of separate [product] classes.'' *See* final rule to amend standards at 79 FR 74492, 74498 (Sept. 15, 2014). DOE stated that a split in preference between top-loaders and front-loaders would not indicate consumer indifference to the axis of loading, but rather that a certain percentage of the market expresses a preference for (*i.e.,* derives utility from) the top-loading configuration. DOE further noted that separation of clothes washer product classes by location of access is similar in nature to the product classes for residential refrigerator-freezers, which include separate product classes based on the access of location of the freezer compartment (*e.g.,* top-mounted, side-mounted, and bottom-mounted). The location of the freezer compartment on these products provides no additional performance-related utility other than consumer preference. In other words, the location of access itself provides distinct consumer utility. *Id.* at 79 FR 74499. DOE also reasoned that top-loading residential clothes washers are available with the same efficiency levels, control panel features, and price points as front-loading residential clothes washers, and that given these equivalencies, purchase of top-loaders indicates a preference among certain consumers for the top-loading configuration, *i.e.,* the top-loading configuration provides utility to those customers preferring one configuration over another, with all other product attributes being equal. *Id.*

DOE acknowledged that its determination of what constitutes a performance-related feature justifying a different standard could change depending on the technology and the consumer, and that as a result, certain products may entirely disappear from the market due to shifting consumer demand. DOE determines such value on a case-by-case basis through its own research as well as public comments received, the same approach that DOE employs in all other parts of its energy conservation standards rulemaking. *See* proposed rule to amend standards for residential furnaces at 80 FR 13120, 13138 (Mar. 12, 2015).

DOE applied this same approach to cycle time for dishwashers in the product class NOPR. 84 FR 33869, 33872 (July 16, 2019). Consumer use of residential clothes washers and consumer clothes dryers is similar to that of residential dishwashers, in that the products provide consumer utility over discrete cycles with programmed cycle times, and consumers run these cycles multiple times per week on average. As such, the impact of cycle time on consumer utility identified by CEI in its petition regarding dishwashers is also relevant to residential clothes washers and consumer clothes dryers. More importantly, DOE previously determined in the context of residential clothes washers that cycle time warrants consideration of separate classes. *See* final standards rule at 77 FR 32308, 32319 (May 31, 2012).

DOE understands that a consumer's perception of the utility provided by a clothes washer encompasses multiple aspects of performance such as: stain removal (*i.e.,* ''cleaning performance''), solid particle removal, rinsing effectiveness, fabric gentleness, cycle time, noise, vibration, and others. A clothes washer's overall performance is a balance among all of these interdependent attributes, and each manufacturer chooses how to balance these aspects of performance. Furthermore, achieving better performance in one attribute may require a tradeoff with one or more other attributes. Similar tradeoffs may exist among the performance attributes of clothes dryers as well, such as dryness, fabric gentleness, wrinkle removal, and cycle time.

Recognizing the interdependence of these multiple aspects of performance in clothes washers and clothes dryers, manufacturers are currently offering models implementing a range of clothes washer and clothes dryer performance characteristics. DOE presumes that the shortest possible cycle times currently available on the market represent the models for which manufacturers have prioritized cycle time while maintaining adequate performance across the other performance aspects. These models must also meet the applicable energy and water conservation standard. Based on this presumption, the current energy conservation standards may be precluding manufacturers from bringing models to the market with substantially shorter cycle times. Offering products with shorter cycle times (which would provide greater consumer utility for that aspect of performance) would require more per-cycle energy and/or water use than would be permitted under the current standards in order to maintain the same level of performance in other areas (*e.g.,* cleaning, noise, *etc.*).

Accordingly, DOE proposes to establish separate product classes for residential clothes washers and consumer clothes dryers based on the cycle time required for a normal cycle to wash and dry, respectively, clothing loads. DOE concludes that cycle time for residential clothes washers and clothes dryers is a performance-related feature for purposes of 42 U.S.C. 6295(q) that justifies a higher or lower standard than that applicable to other product classes of residential clothes washers and clothes dryers.

Based on the data presented in section II.B, DOE proposes to establish separate product classes for top-loading residential clothes washers with an average cycle time of less than 30 minutes when conducting the DOE clothes washer test procedure at 10 CFR part 430, subpart B, appendix J2 (''Appendix J2''). DOE also proposes to establish separate product classes for front-loading residential clothes washers with an average cycle time of less than 45 minutes when conducting the same DOE test procedure. For consumer clothes dryers, DOE proposes separate product classes for clothes dryers with a cycle time of less than 30 minutes when conducting the DOE clothes dryer test procedure at 10 CFR part 430, subpart B, appendix D2 (''Appendix D2''). DOE seeks comment on other appropriate time frames that it could consider in developing the final rule.

[3] 63 FR 48038, 48041 (Sept. 8, 1998).

[4] 73 FR 62034, 62048 (Oct. 17, 2008) (separating standard and self-cleaning ovens into different product classes).

[5] 77 FR 32037, 32319 (May 31, 2012) (creating a separate product class for compact front-loading residential clothes washers).

[6] 75 FR 59469 (Sept. 27, 2010) (creating a separate product class for refrigerators with bottom-mounted freezers).

[7] 74 FR 65852, 65871 (Dec. 11, 2009).

DOE makes clear that if it were to finalize this proposal and thereby establish separate product classes for residential clothes washers and consumer clothes dryers, no energy efficiency standards yet apply to such products. DOE would need to undertake rulemaking pursuant to the procedures established in EPCA and the methodology required by its procedures codified at appendix A to subpart C of 10 CFR part 430. Accordingly, DOE proposes to establish product classes based on cycle time as follows:

(1) Top-loading, standard-size clothes washers with an average cycle time of less than 30 minutes and front-loading, standard-size clothes washers with an average cycle time of less than 45 minutes; and

(2) Vented, electric standard-size clothes dryers and vented gas clothes dryers with a test cycle time of less than 30 minutes.

Such products would not be subject to the applicable DOE test procedure or energy conservation standards, unless and until DOE were to complete appropriate rulemaking to establish applicable test procedures and energy conservation standards.

B. Cycle Time Data

DOE gathered data on cycle times for a range of residential clothes washers and consumer clothes dryers, with test units representing the most popular product classes for each product. This document provides a high-level summary of this data. DOE is also including a separate technical appendix in the docket of this rulemaking that includes a more detailed presentation of the data.[8]

1. Residential Clothes Washers

For residential clothes washers, the top-loading standard-size and front-loading standard-size product classes combined represent over 95 percent of models currently available on the market. DOE does not have data regarding the current distribution of shipments by product class; however, in DOE's experience, model-based distributions provide a close approximation of shipments-based distributions for residential laundry products. DOE's Compliance Certification Database[9] contains 501 unique basic models of residential clothes washers. The number of unique basic models in each product class (including the corresponding percentage of the total 501 models) are as follows:

- Top-Loading, Standard-Size: 293 (58.5 percent)
- Front-Loading, Standard-Size: 187 (37.3 percent)
- Top-Loading, Compact: 20 (4.0 percent)
- Front-Loading, Compact: 1 (0.2 percent)

DOE evaluated the cycle times of a representative sample of units within the top-loading standard-size and front-loading standard-size product classes. For the top-loading standard-size product class, DOE tested 23 units representing 10 brands across 7 manufacturers. For the front-loading standard-size product class, DOE tested 20 units representing 14 brands across 12 manufacturers. The technical appendix provides additional details of the technical attributes of each of the units evaluated.

To evaluate the cycle time of each unit, DOE analyzed test data from performing the Appendix J2 test procedure once in its entirety for each unit. Appendix J2 is the DOE test procedure required to demonstrate compliance with the current energy conservation standards. The Appendix J2 procedure requires testing a complete set of wash/rinse temperature selections and load sizes; the specific temperatures and load sizes required for testing are defined in the test procedure and are based on the user-selectable options and features available on the model.[10] In general, testing is performed using the ''normal'' cycle (*i.e.,* wash program), which is defined as the wash program recommended for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing. For clothes washers with manual water fill control systems (in which the user physically selects the water fill level), Appendix J2 requires testing each available temperature selection using two load sizes: minimum and maximum. For clothes washers with automatic water fill control systems (*i.e.,* ''load-sensing''), Appendix J2 requires testing each available temperature selection using three load sizes: minimum, average, and maximum.[11] Among the top-loading standard-size units that DOE evaluated, 5 models have a manual water fill control system, 14 models have an automatic water fill control system, and 4 models have both manual and automatic water fill systems. All 20 front-loading standard-size units that DOE evaluated have an automatic water fill control system. DOE is not aware of any front-loading models on the market with a manual water fill control system. The DOE test procedure specifies usage factors for the various tested temperature selections and load sizes, to combine the results of all the required wash cycles when calculating the integrated modified energy factor (''IMEF'') rating and integrated water factor (''IWF'') rating.[12]

Clothes washers offer a variety of wash temperature selections (*e.g.,* Cold, Cool, Warm, Hot, Extra Hot/Sanitize, *etc.*). Typically, clothes washer models offer between three and five wash temperatures that are available for the consumer to choose when selecting the ''normal'' cycle. As described, each temperature selection required for testing is tested using the two or three different load sizes, depending on the type of water fill control, as part of the Appendix J2 test procedure.

As an example, consider a representative load-sensing clothes washer with four available wash temperatures in the normal cycle (*e.g.,* Cold, Cool, Warm, Hot). On such a model, conducting Appendix J2 once in its entirety would require performing 12 individual test cycles (*i.e.,* running test cycles on all four temperature settings with each of the three load sizes), the results of which would be combined in a weighted average to produce the IMEF and IWF values.

For each unit in its test sample, DOE evaluated cycle time using the complete set of wash cycle configurations (combinations of wash/rinse temperature settings and load sizes) required by the DOE test procedure. The technical appendix provides additional details of the wash cycle configurations for each unit. The number of wash cycle configurations ranged from 9 (for a manual water fill unit with three temperature selections, each tested with two load sizes) to 21 (for a load-sensing unit with seven temperature selections, each tested with three load sizes). Appendix J2 does not include provisions for determining a single

[8] The technical appendix is available in the docket for this rulemaking at *https://www.regulations.gov.*

[9] DOE's Compliance Certification Database is available at *https://www.regulations.doe.gov/compliance-certification-database.* Last accessed March 12, 2020.

[10] Sections 2.12 and 2.8 of Appendix J2 specify the wash/rinse temperatures and load sizes required for testing, respectively.

[11] Section 2.8 of Appendix J2 specifies the number of load sizes to use based on the model's water fill control system. Table 5.1 of Appendix J2 specifies the weight of each load size to be used for testing, based on the measured capacity of the unit.

[12] Table 4.1.1 of Appendix J2 defines the ''temperature use factors,'' which are the consumer usage factors applied to the temperature selections; and Table 4.1.3 of Appendix J2 defines the ''load usage factors'', which are the consumer usage factors applied to the load sizes. These usage factors are based on based on surveys and other data reflecting consumer usage patterns.

cycle time metric for residential clothes washers. To evaluate overall cycle times for model-to-model comparisons, DOE considered three distinct methods for representing the cycle time of each individual unit:

1. The arithmetic average of the individual cycle times for each wash cycle configuration conducted as part of the Appendix J2 test procedure.
2. The weighted average of the individual cycle times for each wash cycle configuration conducted as part of the Appendix J2 test procedure, using the temperature use factors and load usage factors as defined by Appendix J2 for the weighting.
3. The median cycle time of the complete set of wash cycle configurations conducted as part of the Appendix J2 test procedure.

The data presented below show the results using each of these three methods. The technical appendix includes tables that provide, for each unit evaluated, the individual cycle times for each wash cycle configuration conducted as part of the Appendix J2 test procedure that were used as the basis of this analysis. For the purpose of this evaluation, DOE considered individual cycle time as the time required to complete the entire active washing mode (washing, soaking, tumbling, agitating, rinsing, and/or removing water from the load), not including any continuous status display, intermittent tumbling, or air circulation following operation in active washing mode. DOE recognizes that the cycle times associated with specific wash/rinse temperature combinations, load sizes, or other cycle configurations could also provide useful comparisons across models.

DOE testing indicates that for a given model, the cycle time of any individual wash cycle may be dependent upon the options that are selected for the wash cycle and the size of the load being washed. For example, an Extra Hot/Sanitize temperature selection typically has a longer cycle time than other lower-temperature selections because of the need to heat the water internally to high temperatures, and for the clothes to remain heated for a sufficient amount of time to achieve sanitization. As another example, for load-sensing clothes washers, cleaning a large load size will typically result in a longer cycle time than a small load size. DOE testing suggests, however, that the difference in cycle times as a result of these different selections for a given model (other than for an Extra Hot/Sanitize temperature selection) is typically less than the range in cycle times among different models on the market.

Table II.1 and Table II.2 of this document provide the cycle time (determined using each of the three methods described above) for the top-loading standard-size and front-loading standard-size residential clothes washer test units, respectively. The data include each unit's IMEF and IWF rating, as measured under Appendix J2. Figure II.1 and Figure II.2 present the same data graphically, showing cycle time with respect to each unit's IMEF rating for each of the three methods described above. For the IMEF rating, a higher value indicates more efficient energy performance. For the IWF rating, a lower value indicates more efficient water performance. (See the technical appendix for additional details of the technical attributes of each of the units evaluated.)

TABLE II.1—CALCULATED CYCLE TIME FOR TOP-LOADING, STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS

Test unit	Rated IMEF (cu.ft./kWh/cycle)	Rated IWF (gal/cycle/cu.ft.)	Cycle time (min)		
			Method 1: arithmetic average	Method 2: weighted average	Method 3: median
1	1.57	6.5	41	43	42
2	1.57	6.5	45	50	45
3	1.57	6.5	50	58	51
4	1.57	6.5	64	74	65
5	1.57	6.5	59	61	55
6	1.57	6.5	45	45	44
7	1.57	6.5	40	41	41
8	1.57	6.5	38	38	38
9	1.57	6.5	47	46	46
10	1.71	4.7	40	45	35
11	1.57	6.5	29	29	29
12	1.57	6.5	56	57	57
13	1.57	6.5	55	56	56
14	1.57	6.5	47	54	47
15	2.06	3.8	66	66	66
16	2.38	3.7	66	67	60
17	1.57	6.5	27	28	28
18	1.57	6.5	27	27	27
19	1.57	6.5	42	43	43
20	1.57	6.5	42	43	42
21	1.57	6.5	51	52	52
22	1.57	6.5	50	51	50
23	1.57	6.5	50	51	49

TABLE II.2—CALCULATED CYCLE TIME FOR FRONT-LOADING, STANDARD-SIZE RESIDENTIAL CLOTHES WASHERS

Test unit	Rated IMEF (cu.ft./kWh/cycle)	Rated IWF (gal/cycle/cu.ft.)	Cycle time (min)		
			Method 1: arithmetic average	Method 2: weighted average	Method 3: median
1	2.49	3.5	58	55	56
2	2.22	3.7	69	66	66
3	2.76	3.2	47	47	47
4	2.09	2.8	75	71	70
5	1.86	3.4	68	68	68
6	2.07	4.2	67	59	57
7	2.40	3.7	50	39	35
8	1.85	4.7	78	79	79
9	1.84	4.7	52	54	55
10	1.85	4.6	54	53	53
11	1.85	4.7	77	77	78
12	1.87	4.5	48	48	48
13	2.80	3.0	57	49	49
14	3.00	2.9	68	69	65
15	2.38	3.7	45	45	45
16	1.84	4.6	48	49	46
17	1.85	4.6	77	77	78
18	1.84	4.7	90	78	79
19	1.84	4.7	47	46	43
20	2.38	3.7	59	58	50

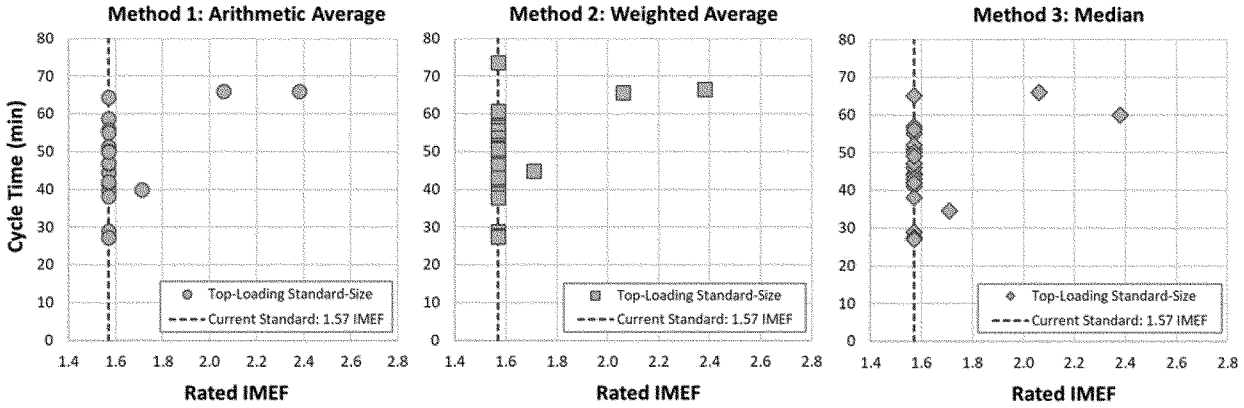

Figure II.1 Calculated Cycle Time for Top-Loading, Standard-Size Residential Clothes Washers

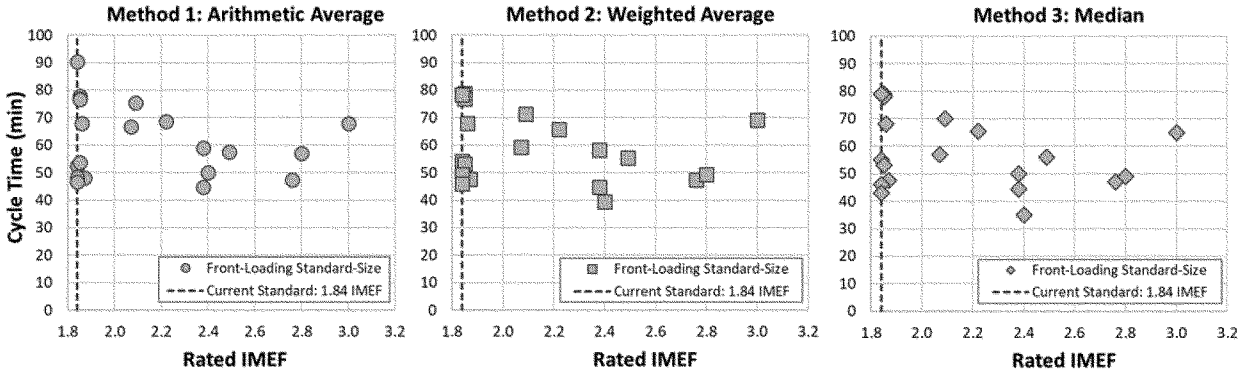

Figure II.2 Calculated Cycle Time for Front-Loading, Standard-Size Residential Clothes Washers

2. Consumer Clothes Dryers

For consumer clothes dryers, the vented electric standard-size and vented gas product classes combined represent over 89 percent of models currently available on the market. DOE does not have data regarding the current distribution of shipments by product class; however, in DOE's experience, model-based distributions provide a close approximation of shipments-based distributions for residential laundry products. DOE's Compliance Certification Database contains 686 unique basic models of residential clothes dryers. The number of unique basic models in each product class (including the corresponding percentage of the total 686 models) are as follows:

- Vented Electric, Standard-Size: 353 (51.5 percent)
- Vented Gas: 261 (38.0 percent)
- Vented Electric, Compact (120V): 22 (3.2 percent)
- Vented Electric, Compact (240V): 20 (2.9 percent)
- Ventless Electric, Compact (240V): 12 (1.7 percent)
- Ventless Electric, Combination Washer-Dryer: 18 (2.6 percent)

DOE evaluated the cycle times of a representative sample of units within the vented electric standard-size and vented gas product classes. For the vented electric standard-size product class, DOE tested 6 units representing 4 brands across 4 manufacturers. In addition, DOE evaluated cycle time data from the ENERGY STAR product database [13] for an additional 245 vented electric standard-size units representing 14 brands across 7 manufacturers. For the vented gas product class, DOE tested 8 units representing 4 brands across 4 manufacturers. In addition, DOE evaluated cycle time data from the ENERGY STAR product database for an additional 110 vented gas units representing 9 brands across 5 manufacturers. In total, DOE evaluated the cycle times of units representing over 50 percent of residential clothes dryer basic models. The technical appendix provides additional details of the technical attributes of each of the units evaluated.

To evaluate the cycle time of each tested unit, DOE analyzed data from performing the Appendix D2 test procedure. Appendix D2 is currently optional for demonstrating compliance with the current DOE energy conservation standards, but is used for demonstrating compliance with ENERGY STAR criteria. Appendix D2 specifies that clothes dryers with automatic cycle termination be operated using the ''normal'' program (or the cycle recommended by the manufacturer for drying cotton or linen clothes in the absence of a normal program) until the completion of the cycle, as indicated to the consumer. Where it is possible for the drying temperature and dryness level to be selected independently of the program, the maximum drying temperature setting is used with the ''normal'' or ''medium'' dryness level (or the mid-point between the minimum and maximum settings). Section 3.3.2 of Appendix D2.

In contrast, Appendix D1 does not provide data that can be used to determine a ''cycle time'' as experienced by the consumer. Performing the Appendix D1 test procedure requires operating the dryer on a timed dry cycle set to the maximum time available, artificially stopping the drying cycle when the moisture content of the load is between 2.0 and 5.5 percent of the bone-dry weight of the cloth, normalizing the measured energy to represent a standardized moisture content removal of 53.5 percent, and applying a field use factor to calculate the representative per-cycle energy use. Because Appendix D1 requires manually stopping operation at a specified moisture content, normalizing, and applying a field use factor, the length of time that a clothes dryer is operated during an Appendix D1 test does not necessarily correspond to the length of time that a consumer would operate the clothes dryers (in contrast to the calculated energy use, which *is* representative of the energy use experienced by the consumer).[14]

The sample of models tested by DOE were certified to DOE using Appendix D1, but tested by DOE using Appendix D2 for the purpose of determining cycle time in this analysis. All of the models analyzed from the ENERGY STAR database were certified to ENERGY STAR using Appendix D2. All of the models in DOE's test sample provide automatic cycle termination capability.

Under Appendix D2, the combined energy factor (''CEF'') rating is based on the energy consumption of a single test cycle.[15] The cycle time evaluated by DOE represents the total cycle time as tested under Appendix D2, excluding any wrinkle prevention mode that continuously or intermittently tumbles the clothes dryer drum after the clothes dryer indicates to the user that the cycle has finished. Table II.3 and Table II.4 provide the Appendix D2 cycle time data for the vented electric standard-size and vented gas clothes dryers tested by DOE, respectively.[16] The technical appendix includes the additional cycle time data evaluated for the models certified in the ENERGY STAR database. Figure II.3 and Figure II.4 present the same data graphically, including the additional cycle time data from the ENERGY STAR product database.[17]

TABLE II.3—MEASURED CYCLE TIME FOR VENTED ELECTRIC STANDARD-SIZE CLOTHES DRYERS USING APPENDIX D2

Test unit	Rated CEF (lbs/kWh)	Cycle time (min)
1	3.73	40
2	3.73	62
3	3.73	67
4	3.74	39
5	3.74	36
6	3.73	45

TABLE II.4—MEASURED CYCLE TIME FOR VENTED GAS CLOTHES DRYERS USING APPENDIX D2

Test unit	Rated CEF (lbs/kWh)	Cycle time (min)
1	3.30	89
2	3.30	78

[13] Manufacturers must report cycle time as tested under Appendix D2 when seeking ENERGY STAR qualification for a consumer clothes dryer basic model. ENERGY STAR product database for clothes dryers is available at *https://www.energystar.gov/productfinder/product/certified-clothes-dryers/results.* Last accessed January 22, 2020.

[14] Appendix D1 does not provide data that can be used to determine a ''cycle time'' because the drying cycle is artificially terminated. The artificially terminated cycle has a field use factor applied to calculate representative energy consumption. Appendix D2 provides representative energy use and a corresponding cycle time, because the cycle is run from start to completion without being artificially terminated.

[15] For automatic termination control dryers, Appendix D2 requires that if the clothes dryer is equipped with a mode that continuously or intermittently tumbles the load after the indicating the cycle has finished (*i.e.,* wrinkle prevention mode) that is activated by default in the as-shipped position or if the manufacturer's instructions specify that the mode be activated for normal use, the cycle is considered complete after the end of wrinkle prevention mode. If at the end of the test cycle, the final moisture content is greater than 2 percent, then the results for that test cycle are discarded and the test is rerun with the highest dryness level setting.

[16] For both vented electric standard and vented gas clothes dryers, baseline units with CEF values near the current energy conservation standard level are typically certified to DOE using Appendix D1. The presented cycle times, however, are those measured by DOE when the units were tested to Appendix D2.

[17] The technical appendix tables, available at *http://www.regulations.gov* include the ENERGY STAR data. This data is not included in this document due to the very large number of models included.

TABLE II.4—MEASURED CYCLE TIME FOR VENTED GAS CLOTHES DRYERS USING APPENDIX D2—Continued

Test unit	Rated CEF (lbs/kWh)	Cycle time (min)
3	3.31	36
4	3.31	35
5	3.30	63
6	3.30	54
7	3.30	33
8	3.30	51

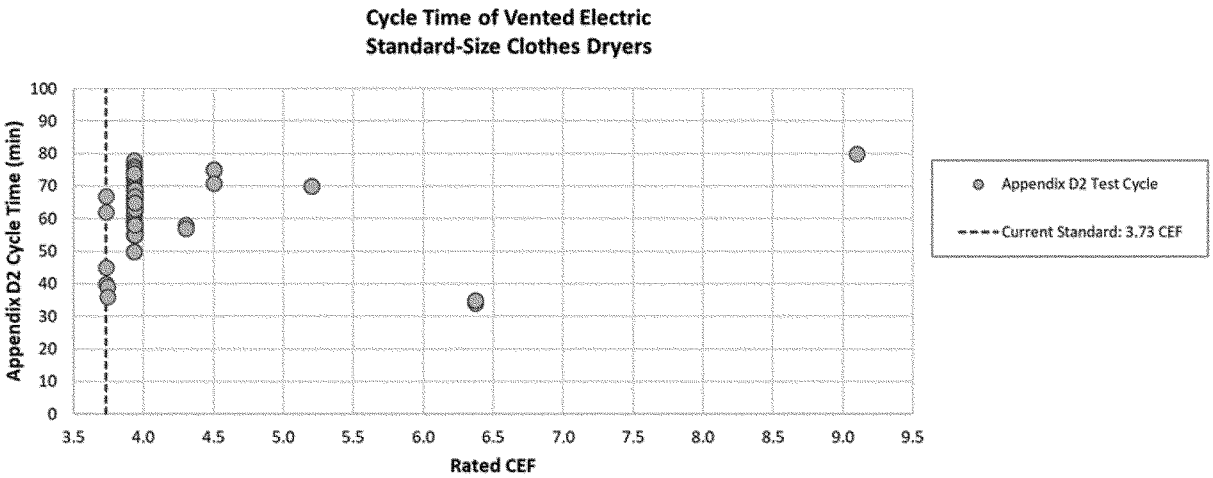

Figure II.3 DOE Cycle Time Data for Vented Electric Standard-Size Clothes Dryers Using Appendix D2

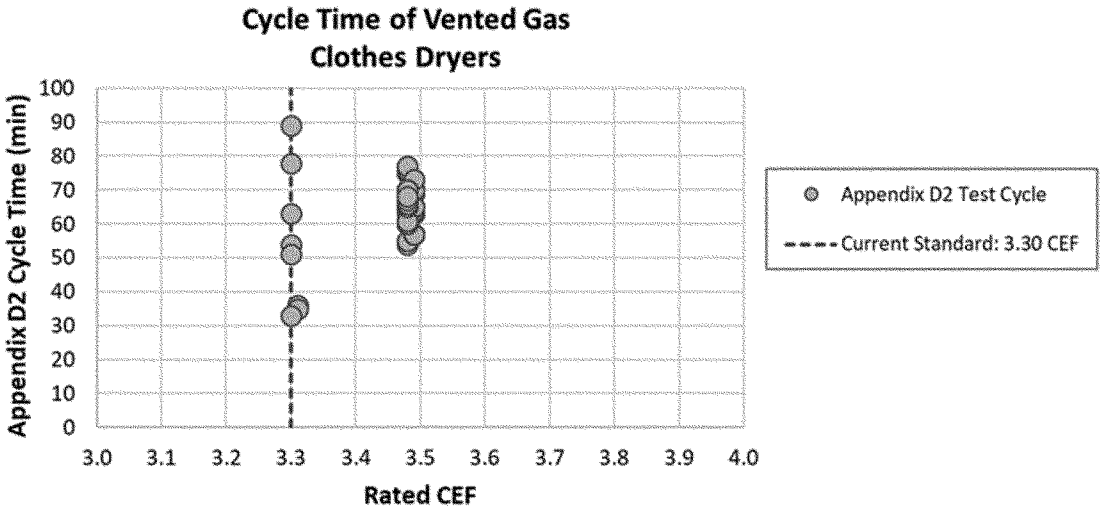

Figure II.4 DOE Cycle Time Data for Vented Gas Clothes Dryers Using Appendix D2

The data presented in this NOPR demonstrate a wide range of cycle times among the clothes dryer models within each product class. Because these cycle times correspond to the ''normal'' program on each model, the differences among them may be due to the characteristics of the heating element/burner control scheme used by the normal cycle; the effectiveness of the automatic termination control system in sensing the moisture content of the load and ending the drying cycle when the specified final moisture content is reached, without significant over-drying; or other factors.

C. Separate Short-Cycle Product Classes

1. Residential Clothes Washers

For residential clothes washers, DOE's data indicate that for standard-size top-loading units on the market, the shortest available cycle time when tested under Appendix J2 (the currently applicable test procedure) is approximately 30 minutes. The data also indicate that for standard-size front-loading units on the market, the shortest available cycle time when tested under Appendix J2 is approximately 45 minutes. This distinction demonstrates that front-loading clothes washers, which are generally more efficient than top-loading clothes washers, inherently require additional time to wash a load

of clothes. Front-loading clothes washers typically use less water, and thus less water heating energy, than comparably-sized top-loading clothes washers due to the tumbling action in front-loading units, but the lower mechanical cleaning action of this tumbling as compared to the agitation in top-loading units can result in relatively longer cycle times to achieve similar cleaning performance. DOE seeks to preserve the utility of a short cycle time for both top-loading and front-loading clothes washers in this NOPR.

Appendix J2 specifies multiple test cycles with varying temperature selections and load sizes to be run as part of the energy test cycle. Because different residential clothes washers may have a differing number of wash and rinse temperature selections required to be tested as part of the energy test cycle in Appendix J2, and because cycles conducted on the same machine at different wash/rinse temperature selections may have differing cycle times, DOE proposes in this NOPR that the cycle time for a particular residential clothes washer model would be considered to be the average of the individual cycle times for each test cycle conducted as part of the energy test cycle specified in Appendix J2. This corresponds to ''Method 1'' described in section II.B.1 of this document. DOE is also proposing that each individual cycle time would be based on the time required to complete the entire active washing mode (which includes washing, soaking, tumbling, agitating, rinsing, and/or removing water from the load), not including any continuous status display, intermittent tumbling, or air circulation following operation in active washing mode. This approach would also provide information to the consumer about an average cycle time across all of the cycles that are representative of consumer usage, consistent with the energy and water consumption information provided in the Integrated Modified Energy Factor (''IMEF'') and Integrated Water Factor (''IWF'') metrics, respectively, that are the bases of the current energy conservation standards for residential clothes washers.

Issue 1: DOE requests comment on the analysis used to determine cycle time for residential clothes washers, including whether calculating an average value across all test cycles (Method 1) is appropriate.

Issue 2: DOE also seeks comment on whether, alternatively, a different method for calculating cycle time should be used, such as the weighted-average method (Method 2 described in section II.B.1 of this document) or the median method (Method 3); or any other method that would be appropriate.

DOE is aware that some clothes washers provide, in addition to the normal cycle,[18] a setting that provides a shorter cycle time. While clothes washers may offer reduced-time cycle options, such cycles are not recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing (as DOE currently defines the normal cycle). Such cycles are not the product's ''normal cycle'' and would not be measured as part of the Appendix J2 test because Appendix J2 specifies performing testing on the normal cycle.

DOE presumes that certain manufacturers are currently implementing the shortest possible cycle times that enable a clothes washer to achieve satisfactory cleaning performance (and other aspects of clothes washer performance) while meeting the applicable energy and water conservation standards. Based on this presumption, the current energy conservation standards may be precluding manufacturers from bringing models to the market with substantially shorter cycle times. DOE's data suggest that standard-size residential clothes washers may not be able to comply with current energy and water conservation standards for residential top-loading clothes washers with cycle times substantively less than 30 minutes and front-loading clothes washers with cycle times substantively less than 45 minutes. To allow manufacturers the opportunity to innovate and develop products that would provide consumers the utility of such shorter cycle times, DOE proposes in this NOPR to establish separate product classes for top-loading standard-size residential clothes washers with average cycle times less than 30 minutes and front-loading standard-size residential clothes washers with average cycle times less than 45 minutes.

Issue 3: DOE seeks comment on its proposal to establish separate product classes for top-loading standard-size residential clothes washers with average cycle times less than 30 minutes, including whether the 30-minute threshold average cycle time is appropriate or whether DOE should consider a different average cycle time for the final rule.

Issue 4: DOE also seeks comment on its proposal to establish separate product classes for front-loading standard-size residential clothes washers with average cycle times less than 45 minutes, including whether the 45-minute threshold average cycle time is appropriate or whether DOE should consider a different average cycle time for the final rule.

DOE is not proposing to establish cycle-time based product classes for top-loading compact and front-loading compact residential clothes washers because compact-size units are niche products that represent less than 4 percent of residential clothes washer models on the market.[19] DOE could consider, however, whether the 30-minute, 45-minute or some other product class distinction related to cycle time should also apply the compact product classes.

Issue 5: DOE seeks comment on whether the 30-minute product class distinction should apply to both standard and compact residential clothes washers, and whether that would include both top-loading and front-loading configurations.

2. Consumer Clothes Dryers

For consumer clothes dryers, DOE's data indicate that for both vented electric standard-size and vented gas units, the shortest available cycle time when tested under Appendix D2 is approximately 30 minutes.

As described, during Appendix D2 testing, consumer clothes dryers equipped with automatic cycle termination are operated using representative cycle settings (specifically, the ''normal'' program, or the cycle recommended by the manufacturer for drying cotton or linen clothes; with the maximum drying temperature and ''normal'' or ''medium'' dryness level, if either setting can be selected independent of the ''normal'' program) to completion of the cycle, with the cycle deemed valid if the final moisture content of the load is no greater than 2 percent.

[18] Section 1.25 of Appendix J2 defines Normal cycle as the cycle recommended by the manufacturer (considering manufacturer instructions, control panel labeling, and other markings on the clothes washer) for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing. For machines where multiple cycle settings are recommended by the manufacturer for normal, regular, or typical use for washing up to a full load of normally-soiled cotton clothing, then the Normal cycle is the cycle selection that results in the lowest IMEF or MEF value.

[19] Based on DOE's Compliance Certification Database for residential clothes washers, top-loading compact and front-loading compact product classes combined represent 32 models out of a total of 816 certified basic models. *https://www.regulations.doe.gov/certification-data/CCMS-4-Clothes_Washers.html#q=Product_Group_s%3A%22Clothes%20Washers%22.* Last accessed January 6, 2020.

As stated, manufacturers are not required to use Appendix D2 at this time to demonstrate compliance with current energy conservation standards. However, manufacturers must use Appendix D2 in order to qualify a consumer clothes dryer for ENERGY STAR labeling, and manufacturers must use a single test procedure (Appendix D1 or Appendix D2) for all representations of energy use, including certification of compliance with applicable energy conservation standards. Therefore, all ENERGY STAR-qualified consumer clothes dryers are already being tested according to Appendix D2.

Issue 6: DOE seeks comment on its use of Appendix D2 to determine the cycle time of a clothes dryer.

DOE's data indicate that vented electric standard-size and vented gas clothes dryers that comply with the current energy conservation standards exhibit cycle times of approximately 30 minutes or longer. Thus, assuming certain manufacturers are currently implementing the shortest possible cycle times that enable a clothes dryer to achieve satisfactory drying performance (and other aspects of clothes dryer performance) while meeting the applicable energy conservation standards, the standards may preclude manufacturers from offering consumers clothes dryers that provide the utility of cycle times shorter than 30 minutes. For these reasons, DOE proposes in this NOPR to establish separate product classes for vented electric standard-size and vented gas clothes dryers with cycle times less than 30 minutes.

Issue 7: DOE seeks comment on its proposal to establish separate product classes for vented electric standard-size vented gas clothes dryers with cycle times less than 30 minutes, including whether the 30-minute threshold cycle time is appropriate or whether DOE should consider a different value for the final rule.

Because compact consumer clothes dryers and combination washer-dryers are niche products that represent a relatively low percentage of models on the market,[20] DOE is not proposing to establish short-cycle product classes for vented electric compact (120 V or 240 V), ventless electric compact (240 V), and ventless electric combination washer-dryer products. DOE seeks comment on whether to establish separate product classes for ventless or compact electric units that offer a short cycle, and if so, an appropriate length for such a product class.

Issue 8: DOE seeks comment on whether the 30-minute product class distinction should apply only to vented electric standard-size and vented gas product classes, or whether shorter cycle times should be considered for all consumer clothes dryer product classes.

Issue 9: DOE further seeks comment on appropriate cycle times for any short-cycle vented electric, ventless electric, and ventless combination washer-dryer product classes.

D. EPCA's Anti-Backsliding Provision

In any rulemaking to establish standards for a separate product class, DOE must consider EPCA's general prohibition against prescribing amended standards that increases the maximum allowable energy use, or, in the case of showerheads, faucets, water closets, or urinals, water use, or decreases the minimum required energy efficiency, of a covered product. (42 U.S.C. 6295(o)(1); the ''anti-backsliding provision'') As explained in the proposed rule that would grant a petition for rulemaking to establish a new dishwasher product class, the anti-backsliding provision must be read in conjunction with the product class authority in 42 U.S.C. 6295(q), and does not prohibit the establishment of product classes as proposed in this document. (84 FR 33869, 33871–33873; July 16, 2019) DOE presents the substance of that explanation in the paragraphs that follow.

Section 6295(q) directs DOE to specify ''a level of energy use or efficiency higher or lower than that which applies (or would apply) for such type or class . . .'' if the Secretary determines that covered products within such group consume a different type of energy or have a capacity or other performance-related feature that justifies ''a higher or lower standard from that which applies (or will apply) to other products within such type (or class).'' (42 U.S.C. 6295(q)) EPCA explicitly acknowledges, therefore, that product features may arise that require designation of a product class with a standard lower than that applicable to other product classes for that covered product.

Specifically, by using the present tense, ''a higher or lower standard than that which applies,'' EPCA authorizes DOE to reduce the stringency of the standard currently applicable to the products covered under the newly established separate product class. The applicability of this provision to current standards is further evidenced by the additional reference to standards that are not yet applicable (*i.e.,* standards that ''would apply'' or ''will apply''). If 42 U.S.C. 6295(q)(1) were to operate only in instances in which standards have not yet been established, there would be no need to separately indicate the applicability to future standards. Nor would there be any purpose to calling out the potential for higher or lower standards, because there would not be any standards against which to measure that potential. In this manner, 42 U.S.C. 6295(q) authorizes DOE to reduce the stringency of a currently applicable standard upon making the determinations required by 42 U.S.C. 6295(q).

This reading of the statutory text recognizes that section 6295(q) of EPCA cannot be read to prohibit DOE from establishing standards that allow for technological advances or product features that could yield significant consumer benefits while providing additional functionality (*i.e.,* consumer utility) to the consumer. DOE relied on this concept when, in 2011, DOE established separate energy conservation standards for ventless clothes dryers, reasoning that the ''unique utility'' presented by the ability to have a clothes dryer in a living area where vents are impossible to install (*i.e.,* a high-rise apartment) merited the establishment of a separate product class. 76 FR 22454, 22485 (Apr. 21, 2011). Another example of this that DOE is beginning to explore is network connectivity of covered products. See DOE's Smart Products RFI at 83 FR 46886 (Sept. 18, 2018). Network connectivity is a technology that has only recently begun to appear on the market. Moreover, it clearly has a desirable consumer utility and is a fast-growing feature of new models of covered products. However, network connectivity comes with attendant energy use. EPCA's anti-backsliding provision cannot be read to prohibit DOE from establishing standards that allow for covered products to be connected to a network simply because standards for those products were established prior to the time that network connectivity was even contemplated, and thereby eliminating

[20] Based on DOE's Compliance Certification Database for consumer clothes dryers, vented electric compact (120 V or 240 V), ventless electric compact (240 V), and ventless electric combination washer-dryer product classes collectively represent 95 models out of a total of 1,086 certified basic models. *https://www.regulations.doe.gov/certification-data/CCMS-4-Clothes_Dryers_-_Appendix_D1.html#q=Product_Group_s%3A%22Clothes%20Dryers%20-%20Appendix%20D1%22* (Appendix D1 models) and *https://www.regulations.doe.gov/certification-data/CCMS-4-Clothes_Dryers_-_Appendix_D2.html#q=Product_Group_s%3A%22Clothes%20Dryers%20-%20Appendix%20D2%22* (Appendix D2 models). Last accessed January 6, 2020.

the ability to implement this consumer-desired option. Similarly, for residential clothes washers and consumer clothes dryers, 42 U.S.C. 6295(q) authorizes DOE to establish standards for product features that provide consumer utility, such as shorter cycle times.

This interpretation is consistent with DOE's previous recognition of the importance of technological advances that could yield significant consumer benefits in the form of lower energy costs while providing the same functionality to the consumer. 80 FR 13120, 13138 (Mar. 12, 2015); 81 FR 65720, 65752 (Sept. 23, 2016). In the proposed and supplemental proposed rule to establish standards for residential furnaces, DOE stated that tying the concept of feature to a specific technology would effectively ''lock-in'' the currently existing technology as the ceiling for product efficiency and eliminate DOE's ability to address such technological advances. *Id.*

Further, EPCA's anti-backsliding provision is limited in its applicability with regard to water use to four specified products, *i.e.,* showerheads, faucets, water closets, or urinals. DOE's existing energy conservation standards for residential clothes washers include both energy and water use components. As residential clothes washers are not one of the products listed in the anti-backsliding provision with respect to water use, EPCA does not prohibit DOE from specifying a maximum amount of water use for residential clothes washers that is greater than the existing standard without regard to whether DOE were to establish separate product classes for residential clothes washers as proposed in this proposed rule.

Finally, DOE recognizes that 42 U.S.C. 6295(o)(4) prohibits DOE from establishing standards that would result in the unavailability in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities and volumes that are substantially the same as those generally available at the time of the Secretary's finding. Section 6295(q) of EPCA authorizes DOE to set standards that recognize new technologies and product features, or in this case, features that are no longer available in the market. This reading of the statute is consistent with DOE's previous acknowledgment that its determination of what constitutes a performance-related feature justifying a different standard could change depending on the technology and the consumer utility, and that as a result, certain products may disappear from (or reappear in) the market entirely due to shifting consumer demand. This reading is also consistent with DOE's statements that DOE determines this value on a case-by-case basis through its own research as well as public comments received. (80 FR 13120, 13138, Mar. 12, 2015). In addition, once DOE makes a determination that a certain product attribute is a feature, DOE cannot later set a standard that would eliminate that feature.

III. Conclusion

DOE has concluded that it has legal authority to establish separate short-cycle product classes for residential clothes washers and consumer clothes dryers pursuant to 42 U.S.C. 6295(q). DOE proposes to establish separate product classes for top-loading standard-size and front-loading standard-size residential clothes washers with cycle times of less than 30 and 45 minutes, respectively, and for vented electric standard-size and vented gas clothes dryers with a cycle time of less than 30 minutes. DOE will consider test procedures and energy conservation standards in separate rulemakings, should such product classes be established.

DOE also proposes to update the requirements for the residential clothes washer and consumer clothes dryer standards at 10 CFR 430.32(g)(4) and (h)(3), respectively. The current requirements for both products include tables that specify the applicable energy conservation standards. DOE proposes to add new paragraphs following each table showing the current requirements to specify that top-loading standard-size and front-loading standard-size residential clothes washers with an average cycle time of less than 30 and 45 minutes, respectively, are not currently subject to energy or water conservation standards, and that vented electric standard-size and vented gas clothes dryers with a cycle time of less than 30 minutes are not currently subject to energy conservation standards.

As noted, DOE seeks comment on other potential time limits or utilities to delineate the separate product classes, as well as whether short-cycle product classes should be established for other product classes of residential clothes washers and consumer clothes dryers. Should DOE finalize separate product classes, DOE would then evaluate energy and water consumption limits to determine standards for each product class that provide for the maximum energy efficiency that is technologically feasible and economically justified, and will result in a significant conservation of energy. (42 U.S.C. 6295(o)(2)(A)) DOE will provide additional opportunity for comment on any proposed energy conservation standards for short-cycle residential clothes washers and consumer clothes dryers.

IV. Request for Comments, Data, and Information

In this rulemaking, DOE proposes to establish separate product classes for top-loading standard-size and front-loading standard-size residential clothes washers with cycle times of less than 30 and 45 minutes, respectively, and vented electric standard-size and vented gas consumer clothes dryers with a cycle time of less than 30 minutes. To inform its consideration of the proposal and any future energy conservation standards for such residential clothes washers and consumer clothes dryers, DOE requests additional data on the following:

Issue 10: DOE requests data on the cycle times of cycles with various wash and rinse temperature selections and load sizes for residential clothes washers (both standard size and compact).

Issue 11: DOE requests data on the cycle time of consumer clothes dryers (standard size and compact, vented and ventless, 120 V and 240 V, and combination washer-dryer configurations) currently on the market.

Issue 12: DOE requests comment on whether any current technologies are available that could provide a wash cycle (for residential clothes washers) or a dry cycle (for consumer clothes dryers) in less than 30 minutes, and that would allow the product to comply with the applicable current energy conservation standards.

As noted, in addition to the normal cycle, some clothes washers provide a cycle that provides a shorter cycle time. To better understand the extent of the utility that a short cycle would potentially provide consumers, DOE requests comment and data on the following:

Issue 13: For each current residential clothes washer product class, DOE seeks data and information on consumer use of reduced-time cycles as a percentage of individual residential clothes washer use; the cycle time of the reduced-time cycles selected; and the cycle time of the ''normal'' cycle of that clothes washer.

Issue 14: DOE seeks data and information on how residential clothes washers with ''express'' or ''quick wash'' cycles operate and how those cycles compare to a ''normal cycle'' with regard to cleaning clothing.

Issue 15: DOE requests information on the operating demands on consumers

that may favor shorter cycle times for both residential clothes washers and consumer clothes dryers.

In analyzing the feasibility of potential energy conservation standards, DOE uses information about existing and past technology options and prototype designs to help identify technologies that manufacturers could use to meet and/or exceed a given set of energy conservation standards under consideration.

Issue 16: DOE seeks information on technologies currently used or that could be used to achieve cycles with reduced time. Specifically, DOE is interested in information regarding expected market adoption and any concerns with incorporating such technologies into products (*e.g.,* impacts on consumer utility; potential safety concerns; manufacturing, production, implementation issues, *etc.*).

Issue 17: DOE seeks input on the costs associated with incorporating particular technologies and/or design options to achieve cycles with reduced time.

Issue 18: DOE seeks information on the range of efficiencies or performance characteristics associated with each technology option that could be used to achieve cycles with reduced time.

Issue 19: DOE requests information on the investments necessary to incorporate specific technologies and design options that could be used to achieve cycles with reduced time, including, but not limited to, costs related to new or modified tooling (if any), materials, engineering and development efforts to implement each design option, and manufacturing or production impacts.

Issue 20: DOE requests comment on any impacts to small businesses that may occur as a result of this proposal.

DOE has identified a variety of issues on which it seeks input in this rulemaking to establish separate product classes and the appropriate energy conservation standards for such product classes, should they be established. Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document. In particular, DOE notes that under Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' Executive Branch agencies such as DOE are directed to manage the costs associated with the imposition of expenditures required to comply with Federal regulations. See 82 FR 9339 (Feb. 3, 2017). Consistent with that Executive Order, DOE encourages the public to provide input on measures that DOE could take to lower the cost of its energy conservation standards rulemakings, recordkeeping and reporting requirements, and compliance and certification requirements applicable to residential clothes washers and clothes dryers, while remaining consistent with the requirements of EPCA.

V. Submission of Comments

DOE invites all interested parties to submit in writing by October 13, 2020, comments and information on matters addressed in this document and on other matters relevant to DOE's consideration of a separate product classes for top-loading, standard-size residential clothes washers with an average cycle time of less than 30 minutes when conducting the test procedure at Appendix J2; for front-loading, standard-size residential clothes washers with an average cycle time of less than 45 minutes when conducting the test procedure at Appendix J2; and vented electric standard-size clothes dryers and vented gas clothes dryers with a cycle time of less than 30 minutes when conducting the test procedure in Appendix D2. DOE also seeks comment on potential energy conservations standards for such classes of residential clothes washers and consumer clothes dryers, should they be established. After the close of the comment period, DOE will review the public comments received and begin collecting data and conducting the analyses necessary to consider appropriate energy conservation standard levels.

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 (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *http://www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *http://www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *http://www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *http://www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, 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/courier two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 ''Regulatory Planning and Review''

This proposed rule is a ''significant regulatory action'' under the criteria set out in section 3(f) of Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review by the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'').

B. Review Under Executive Order 13771

On January 30, 2017, the President issued Executive Order (''E.O.'') 13771, ''Reducing Regulation and Controlling Regulatory Costs.'' 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.

DOE has determined that this proposed rule is a deregulatory action. This proposed rule, if adopted, would establish separate product classes for short-cycle residential clothes washers and consumer clothes dryers. Manufacturers could design and manufacture new products in this product class to meet consumer demand. DOE also seeks data to assist its determination of the appropriate standard levels for such product classes in subsequent rulemakings.

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 (''IRFA'') 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 rulemaking process. 68 FR 7990. DOE has made these 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. DOE has tentatively concluded that this proposed rule will not have a significant impact on a substantial number of small entities. The factual basis for this determination is as follows:

The Small Business Administration (''SBA'') considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers or earns less than the average annual receipts specified in 13 CFR part 121. The threshold values set forth in these regulations use size standards and codes established by the North American Industry Classification System (''NAICS'') that are available at: *https://www.sba.gov/document/support-tablesize-standards.* The threshold number for NAICS classification code 335220, major household appliance manufacturing, which includes clothes dryer and clothes washer manufacturers, is 1,500 employees. Manufacturers must certify compliance of their products to DOE prior to distributing them in commerce. Because no small manufacturers have certified to DOE in 2019 or 2020, DOE does not believe that there are any small manufacturers of these products. In addition, this rulemaking proposes to establish product classes for residential clothes washers and consumer clothes dryers with cycle times less than 30 minutes. Appropriate standard levels would be established in subsequent rulemakings. As a result, DOE certifies that the proposed rule would not have a significant impact on a substantial number of small entities. 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).

D. Review Under the Paperwork Reduction Act

This rulemaking, which proposes to establish product classes for residential clothes washers and consumer clothes dryers with cycle times less than 30 minutes, but does not establish standards or new testing requirements that would be required for testing such products, imposes no new information or record keeping requirements. Accordingly, Office of Management and Budget clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

Manufacturers of covered products generally 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 residential clothes washers and consumer clothes dryers. (*See generally* 10 CFR part 429). The collection-of-information requirement for the certification and recordkeeping

is 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

In this proposed rule, DOE proposes to establish product classes for residential clothes washers and consumer clothes dryers with cycle times less than 30 minutes. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would only establish new product classes for residential clothes washers and consumer clothes dryers and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

F. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal 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. 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) No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 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, and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). 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 section 3(a) and section 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, this 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 them. 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://www.gc.doe.gov*). This proposed 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 under the Unfunded Mandates Reform Act 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

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

K. Review Under the 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 Federal agencies to review most disseminations of information to the public under information quality

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 OIRA at 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 promulgates 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 for energy supply, distribution, and use. This proposed rule, which would establish product classes for residential clothes washers and consumer clothes dryers with cycle times less than 30 minutes, would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 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 July 16, 2020, by Daniel R. Simmons, Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 16, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.32 is amended by revising paragraphs (g)(4) and (h)(3) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(g) * * *

(4)(i) Except as provided in paragraph (g)(4)(ii) of this section, clothes washers manufactured on or after January 1, 2018, shall have an Integrated Modified Energy Factor no less than, and an Integrated Water Factor no greater than:

Product class	Integrated modified energy factor (cu.ft./kWh/cycle)	Integrated water factor (gal/cycle/cu.ft.)
i. Top-loading, Compact (less than 1.6 ft3 capacity)	1.15	12.0
ii. Top-loading, Standard (1.6 ft3 or greater capacity)	1.57	6.5
iii. Front-loading, Compact (less than 1.6 ft3 capacity)	1.13	8.3
iv. Front-loading, Standard (1.6 ft3 or greater capacity)	1.84	4.7

(ii) Top-loading, standard clothes washers with an average cycle time of less than 30 minutes and front-loading, standard clothes washers with an average cycle time of less than 45 minutes are not currently subject to energy or water conservation standards.

(h) * * *

(3)(i) Except as provided in paragraph (h)(3)(ii) of this section, clothes dryers manufactured on or after January 1, 2015, shall have a combined energy factor no less than:

Product class	Combined energy factor (lbs/kWh)
i. Vented Electric, Standard (4.4 ft3 or greater capacity)	3.73
ii. Vented Electric, Compact (120V) (less than 4.4 ft3 capacity)	3.61
iii. Vented Electric, Compact (240V) (less than 4.4 ft3 capacity)	3.27
iv. Vented Gas	3.30
v. Ventless Electric, Compact (240V) (less than 4.4 ft3 capacity)	2.55
vi. Ventless Electric, Combination Washer-Dryer	2.08

(ii) Vented, electric standard clothes dryers and vented gas clothes dryers with a cycle time of less than 30 minutes, when tested according to appendix D2 in subpart B of this part,

are not currently subject to energy conservation standards.

* * * * *

[FR Doc. 2020–15750 Filed 8–12–20; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590–AB04

2021 Enterprise Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing a rule and seeking comments on proposed benchmark levels for the 2021 housing goals for Fannie Mae and Freddie Mac (the Enterprises). The housing goals apply to mortgages purchased by the Enterprises and include separate categories for single-family and multifamily housing that is affordable to low-income and very low-income families, among other categories. This proposed rule would establish benchmark levels for each of the housing goals for 2021.

DATES: Comments must be received on or before October 13, 2020.

ADDRESSES: You may submit your comments on the proposed rule, identified by regulatory information number (RIN) 2590–AB04, by any one of the following methods:

- *Agency Website: https://www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Include the following information in the subject line of your submission: Comments/RIN 2590–AB04.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AB04, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Deliver the package at the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AB04, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219. Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks.

FOR FURTHER INFORMATION CONTACT: Ted Wartell, Associate Director, Housing & Community Investment, Division of Housing Mission and Goals, at (202) 649–3157, *Ted.Wartell@fhfa.gov;* Padmasini Raman at (202) 649–3633, *Padmasini.Raman@fhfa.gov;* or Kevin Sheehan, Associate General Counsel, Office of General Counsel, (202) 649–3086, *Kevin.Sheehan@fhfa.gov.* These are not toll-free numbers. The mailing address is: Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule and will take all comments into consideration before issuing a final rule. Copies of all comments on the proposed rule will be posted without change, including any personal information you provide such as your name, address, email address, and telephone number, on the FHFA website at *https://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

II. Background

Uncertainty over public health and the economic impacts of the COVID–19 pandemic has caused significant disruption in both the single-family and multifamily housing markets since March. For reasons explained in more detail later in the proposed rule, due to the unexpectedly severe nature of the COVID–19 pandemic and associated economic uncertainty, FHFA is proposing benchmark levels for the single-family and multifamily goals for calendar year 2021 only. The proposed benchmark levels are set forth below and would be the same as those for 2018–2020. FHFA will subsequently conduct a new round of notice and comment rulemaking to establish benchmark levels for 2022 and beyond.

A. Statutory and Regulatory Background for the Existing Housing Goals

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) requires FHFA to establish several annual housing goals for both single-family and multifamily mortgages purchased by Fannie Mae and Freddie Mac.[1] The annual housing goals are one measure of the extent to which the Enterprises are meeting their public purposes, which include ''an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return.'' [2]

FHFA has established annual housing goals for Enterprise purchases of single-family and multifamily goals consistent with the requirements of the Safety and Soundness Act. The structure of the housing goals and the rules for determining how mortgage purchases are counted or not counted are defined in the housing goals regulation.[3] The most recent rule established benchmark levels for the housing goals for 2018–2020.[4] This proposed rule would establish benchmark levels for 2021, but it would not make any other changes to the housing goals regulation.

Single-family goals. The single-family goals defined under the Safety and Soundness Act include separate categories for home purchase mortgages for low-income families, very low-income families, and families that reside in low-income areas.[5] FHFA has also established a subgoal within the low-income areas goal that is limited to families in low-income census tracts and moderate-income families in minority census tracts. Performance on the single-family home purchase goals is measured as the percentage of the total home purchase mortgages purchased by an Enterprise each year that qualify for each goal or subgoal. There is also a separate goal for refinancing mortgages for low-income families, and

[1] *See* 12 U.S.C. 4561(a).

[2] *See* 12 U.S.C. 4501(7).

[3] *See* 12 CFR part 1282.

[4] *See* 83 FR 5878 (Feb. 12, 2018).

[5] The low-income areas housing goal includes (1) families in ''low-income census tracts,'' defined as census tracts with median income less than or equal to 80 percent of AMI; (2) families with incomes less than or equal to area median income who reside in minority census tracts (defined as census tracts with a minority population of at least 30 percent and a tract median income of less than 100 percent of AMI); and (3) families with incomes less than or equal to 100 percent of area median income who reside in designated disaster areas.

performance on the refinancing goal is determined in a similar way.

Under the Safety and Soundness Act, the single-family housing goals are limited to mortgages on owner-occupied housing with one to four units total. The single-family goals cover conventional, conforming mortgages, defined as mortgages that are not insured or guaranteed by the Federal Housing Administration or another government agency and with principal balances that do not exceed the conforming loan limits for Enterprise mortgages.

Two-part evaluation approach. The performance of the Enterprises on the housing goals is evaluated using a two-part approach, comparing the goal-qualifying share of the Enterprise's mortgage purchases to two separate measures: A benchmark level; and a market level. In order to meet a single-family housing goal, the percentage of mortgage purchases by an Enterprise that meet each goal must equal or exceed either the benchmark level or the market level for that year. The benchmark level is set prospectively by rulemaking based on various factors set forth in the Safety and Soundness Act.[6] The market level is determined retrospectively for each year, based on the actual goal-qualifying share of the overall market as measured by the Home Mortgage Disclosure Act (HMDA) data for that year. The overall market that FHFA uses for setting both the prospective benchmark level and the retrospective market level consists of all single-family owner-occupied conventional conforming mortgages that would be eligible for purchase by either Enterprise. It includes loans purchased by the Enterprises as well as comparable loans held in a lender's portfolio. It also includes any loans that are part of a private label security (PLS), though very few such securities have been issued for conventional conforming mortgages since 2008.

While both the benchmark level and the retrospective market level are designed to measure the current year's mortgage originations, the performance of the Enterprises on the housing goals includes all Enterprise purchases in that year, regardless of the year in which the loan was originated. This includes housing goals credit when the Enterprises acquire qualified seasoned loans. (Seasoned loans are loans that were originated in prior years and acquired by the Enterprise in the current year.)

Multifamily goals. The multifamily goals defined under the Safety and Soundness Act include categories for mortgages on multifamily properties (properties with five or more units) with rental units affordable to low-income families and mortgages on multifamily properties with rental units affordable to very low-income families. FHFA has also established a small multifamily low-income subgoal for properties with 5–50 units. The multifamily housing goals include all Enterprise multifamily mortgage purchases, regardless of the purpose of the loan. The multifamily goals evaluate the performance of the Enterprises based on numeric targets, not percentages, for the number of affordable units in properties backed by mortgages purchased by an Enterprise. FHFA has not established a retrospective market level measure for the multifamily goals, due in part to a lack of comprehensive data about the multifamily market. As a result, FHFA currently measures Enterprise multifamily goals performance against the benchmark levels only.

The Safety and Soundness Act requires that affordability for rental units under the multifamily goals be determined based on rents that ''[do] not exceed 30 percent of the maximum income level of such income category, with appropriate adjustments for unit size as measured by the number of bedrooms.'' [7] The housing goals regulation considers the net rent paid by the renter and, therefore, nets out any subsidy payments that the renter may receive, including housing assistance payments.

B. Adjusting the Housing Goals

If, after publication of a final rule establishing the housing goals for 2021, FHFA determines that any of the single-family or multifamily housing goals should be adjusted in light of market conditions, to ensure the safety and soundness of the Enterprises, or for any other reason, FHFA will take any steps that are necessary and appropriate to adjust that goal such as reducing the benchmark levels through the processes in the existing regulation. FHFA recognizes that 2021 is likely to be a year of disrupted economic activity. While FHFA is taking this uncertainty into consideration in proposing the benchmark levels for 2021, FHFA may take other actions consistent with the Safety and Soundness Act and the Enterprise housing goals regulation based on new information or developments that occur after publication of a final rule.

For example, under the Safety and Soundness Act and the Enterprise housing goals regulation, FHFA may reduce the benchmark levels in response to an Enterprise petition for reduction for any of the single-family or multifamily housing goals in a particular year based on a determination by FHFA that: (1) Market and economic conditions or the financial condition of the Enterprise require a reduction; or (2) efforts to meet the goal or subgoal would result in the constraint of liquidity, over-investment in certain market segments, or other consequences contrary to the intent of the Safety and Soundness Act or the purposes of the Enterprises' charter acts.[8]

The Safety and Soundness Act and the Enterprise housing goals regulation also take into account the possibility that achievement of a particular housing goal may or may not have been feasible for an Enterprise. If FHFA determines that a housing goal was not feasible for an Enterprise to achieve, then the statute and regulation provide for no further enforcement of that housing goal for that year.[9]

If FHFA determines that an Enterprise failed to meet a housing goal and that achievement of the housing goal was feasible, then the statute and regulation provide FHFA with discretion to require the Enterprise to submit a housing plan describing the specific actions the Enterprise will take to improve its performance. FHFA is requesting comments on factors that FHFA should consider in determining whether to require an Enterprise to submit a housing plan. For example, are there other Enterprise activities such as forbearance actions, loss mitigation efforts, loan modifications, and other market support activities that FHFA should take into account while reviewing Enterprise goals performance for 2021 on both the single-family and multifamily side? While FHFA is not proposing any change to the regulation regarding housing plans, FHFA welcomes input from the public on factors that FHFA should consider in making discretionary determinations on whether to require a housing plan.

C. Housing Goals Under Conservatorship

On September 6, 2008, FHFA placed each Enterprise into conservatorship.

[6] *See* 12 U.S.C. 4562(e).

[7] *See* 12 U.S.C. 4563(c). This affordability definition is sometimes referred to as the ''Brooke Amendment,'' which states that to be affordable at the 80 percent of area median income level, the rents must not exceed 30 percent of the renter's income which must not exceed 80 percent of the area median income. *See https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_092214.html* for a description of the Brooke Amendment and background on the notion of affordability embedded in the housing goals.

[8] 12 CFR 1282.14(d).

[9] 12 CFR 1282.21(a); 12 U.S.C. 4566(b).

Although the Enterprises remain in conservatorship at this time, they continue to have the mission of supporting a stable and liquid national market for residential mortgage financing. FHFA has continued to establish annual housing goals for the Enterprises and to assess their performance under the housing goals each year during conservatorship.

III. Summary of Proposed Rule

Due to the unexpectedly severe nature of the COVID–19 pandemic and associated economic uncertainty, FHFA is proposing benchmark levels for the single-family and multifamily goals for calendar year 2021 only. FHFA will subsequently conduct a new round of notice and comment rulemaking to establish benchmark levels for 2022 and beyond. The proposed benchmark levels are set forth below and would be the same as those for 2018–2020.

A. Proposed Benchmark Levels for the Single-Family Housing Goals for 2021

This proposed rule would establish the benchmark levels for the single-family housing goals and subgoal for 2021 as follows:

Goal	Criteria	Current benchmark level for 2018–2020 (percent)	Proposed benchmark level for 2021 (percent)
Low-Income Home Purchase Goal	Home purchase mortgages on single-family, owner-occupied properties with borrowers with incomes no greater than 80 percent of area median income.	24	24
Very Low-Income Home Purchase Goal.	Home purchase mortgages on single-family, owner-occupied properties with borrowers with incomes no greater than 50 percent of area median income.	6	6
Low-Income Areas Home Purchase Subgoal.	Home purchase mortgages on single-family, owner-occupied properties with: • Borrowers in census tracts with tract median income of no greater than 80 percent of area median income; or • Borrowers with income no greater than 100 percent of area median income in census tracts where (i) tract income is less than 100 percent of area median income, and (ii) minorities comprise at least 30 percent of the tract population.	14	14
Low-Income Refinancing Goal	Refinancing mortgages on single-family, owner-occupied properties with borrowers with incomes no greater than 80 percent of area median income.	21	21

The single-family housing goals also include a Low-Income Areas Home Purchase Goal that the regulation defines as the benchmark level for the Low-Income Areas Home Purchase Subgoal plus an additional ''disaster areas'' increment that FHFA determines each year based on Federal Emergency Management Agency declarations of disasters that are applicable to that year. The proposed rule would not make any change to the criteria or process for setting the additional ''disaster areas'' increment for 2021.

B. Proposed Benchmark Levels for the Multifamily Housing Goals for 2021

The proposed rule would also establish the benchmark levels for the multifamily goal and subgoals for 2021 as follows:

Goal	Criteria	Current benchmark level for 2018–2020 (units)	Proposed benchmark level for 2021 (units)
Low-Income Goal	Units affordable to families with incomes no greater than 80 percent of area median income in multifamily rental properties with mortgages purchased by an Enterprise.	315,000	315,000
Very Low-Income Subgoal	Units affordable to families with incomes no greater than 50 percent of area median income in multifamily rental properties with mortgages purchased by an Enterprise.	60,000	60,000
Low-Income Small Multifamily Subgoal.	Units affordable to families with incomes no greater than 80 percent of area median income in small multifamily rental properties (5 to 50 units) with mortgages purchased by an Enterprise.	10,000	10,000

IV. Single-Family Housing Goals

The Safety and Soundness Act requires FHFA to consider the following seven factors in setting the single-family housing goals:

1. National housing needs;

2. Economic, housing, and demographic conditions, including expected market developments;

3. The performance and effort of the Enterprises toward achieving the housing goals in previous years;

4. The ability of the Enterprises to lead the industry in making mortgage credit available;

5. Such other reliable mortgage data as may be available;

6. The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described, relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively; and

7. The need to maintain the sound financial condition of the Enterprises.[10] FHFA has considered each of these

[10] 12 U.S.C. 4562(e)(2)(B).

seven statutory factors in setting the proposed benchmark levels for each of the single-family housing goals and subgoal.

In setting the benchmark levels for the single-family housing goals, FHFA typically relies on statistical market models to evaluate these statutory factors and generate a point forecast for each goal as well as a confidence interval for the point forecast. FHFA then considers other statutory factors, as well as other relevant policy issues, to select a specific point forecast within the confidence interval as the proposed benchmark level. However, due to the unexpectedly severe nature of the COVID–19 pandemic and the current associated uncertainty going forward, FHFA has determined that the data used to create the statistical market models is not sufficient to reflect economic conditions for 2021. As a result, FHFA is proposing to keep the benchmark levels for 2021 at the same level as for 2020.

In proposing the benchmark levels for the single-family housing goals for 2021, FHFA considered the statutory factors, including the current economic conditions, national housing needs, recent market developments, and the past performance of the Enterprises on the housing goals.

Current Economic Conditions

Uncertainty over public health and the economic impacts of the COVID–19 pandemic have dealt a severe blow to the U.S. economy. The sudden drop in economic activity has created widespread disruptions and resulted in an unprecedented level of job losses. The unemployment rate jumped from 3.5 percent in February to 14.7 percent in April.[11] Inflation-adjusted consumer expenditures, which account for about two-thirds of gross domestic product (GDP), declined 7.3 percent in March. On June 8, the Business Cycle Dating Committee of the National Bureau of Economic Research officially declared that the U.S. economy fell into a recession in February, ending one of the longest economic expansions in history.[12]

The depth and duration of this recession and the path to economic recovery remain highly uncertain. According to the most recent estimate published by the Congressional Budget Office (CBO),[13] the COVID–19 pandemic and associated social distancing triggered a sharp contraction in output in the second quarter of 2020 but the CBO projects that real Gross Domestic Product (GDP) will grow rapidly in the second half of 2020 and the first half of 2021. Strong GDP growth is projected to continue thereafter but at a slower pace. The unemployment rate is projected to peak at over 14 percent in the third quarter of this year and then to fall quickly as output increases in the second half of 2020 and throughout 2021. Nonetheless, real GDP growth is projected to be negative 5.8 percent for 2020 while the unemployment rate will be 10.6 percent for 2020. However, the CBO notes that there is an ''unusually high degree of uncertainty'' surrounding its projections due to the nature of the pandemic and the behavioral and policy responses aimed at containing its spread, and the difficulties of recording and compiling economic data during the unusually strong economic disruption in the second quarter of 2020.

The implications for the primary and secondary mortgage markets are still unfolding as policy makers consider responses to the economic disruption caused by COVID–19. Congress passed the CARES Act to address some of the most pressing impacts of the economic disruption, including by extending unemployment benefits. Nevertheless, the availability of credit has contracted in the mortgage market due to a variety of factors, including additional down payment and loan-to-value restrictions and generally tightened underwriting requirements.

FHFA is monitoring how these unfolding changes may impact various segments of the market, including those targeted by the housing goals. For instance, while the economic disruption has resulted in tightening of credit, job losses and uncertainty may also lead many low-income households to exit the market of potential homebuyers. However, the size of the impact on the share of low-income households among all home purchase mortgages is uncertain.

National Housing Needs

At the start of 2020, the American housing market overall was in a strong position. After falling for 12 consecutive years, the U.S. homeownership rate reached 65.1 percent in 2019, with first-time homebuyers becoming an increasingly larger share of the homebuying market, helping to drive its overall expansion.[14] Affordability challenges for low-income households remained, however. While interest rates have remained low since the recession, home prices have climbed steadily, with real prices back within 2 percent of their 2006 peak at the end of 2018, according to the FHFA House Price Index. The ratio of median home price to median household income is a common yardstick for measuring affordability, indicating how difficult it is for would-be buyers to qualify for a mortgage and save for a down payment. Nationwide, this ratio declined from a peak of 4.7 in 2005 to a low of 3.3 in 2011 and then rose to 4.1 in 2018.[15] However, during 2019, house price growth was starting to align with the growth in median household incomes.

Recent Market Developments

In response to the COVID–19 pandemic, financial markets endured a severe dislocation in March, and housing markets were no exception. What is known to date is preliminary, as key housing market indicators—on housing construction, sales, prices, inventory, and more—indicate that the extent of disruption is extensive. At the same time housing supply remains tight, providing support to house prices. At least initially, the combination of social distancing measures and heightened economic concerns caused home sales to drop significantly and homebuilders to pull back on new housing starts. Single-family housing starts declined 17.5 percent in March and another 25.4 percent in April. Housing starts rose 4.3 percent in May, but this still leaves the rate down 23.2 percent compared to May 2019.[16]

The full impact of the COVID–19 pandemic on the low-income home purchase market is unknown. However, the levels of output and employment

[11] The Bureau of Labor Statistics (BLS), which publishes the unemployment rate and other labor statistics each month, noted that the April unemployment rate probably understated the share of unemployed workers in the labor force because many workers who should have been classified as ''unemployed on temporary layoff'' were most likely misclassified as ''employed absent from work'' in the Current Population Survey. A BLS analysis of the underlying data suggests that, had that misclassification not occurred, the April unemployment rate would have been nearly 5 percentage points higher. *See* Bureau of Labor Statistics, ''Frequently Asked Questions: The Impact of the Coronavirus (COVID–19) Pandemic on the Employment Situation for April 2020'' (May 8, 2020), *https://go.usa.gov/xvM73.*

[12] *See https://www.nber.org/cycles/june2020.html.*

[13] Congressional Budget Office, ''An Update to the Economic Outlook: 2020–2030,'' published on July 2, 2020, accessed on 7/8/2020 at *https://www.cbo.gov/publication/56442.*

[14] U.S. Census Bureau, ''Quarterly Residential Vacancies and Homeownership,'' Fourth Quarter 2019, Release Number: CB20–05, available at *https://www.census.gov/housing/hvs/files/qtr419/Q419press.pdf.*

[15] Joint Center for Housing Studies of Harvard University, ''The State of the Nation's Housing 2019,'' available at *https://www.jchs.harvard.edu/state-nations-housing-2019.*

[16] U.S. Census Bureau, ''Monthly New Residential Construction,'' May 2020, Release Number: CB20–90, available at *https://www.census.gov/construction/nrc/pdf/newresconst.pdf.*

remain far below their pre-pandemic levels, and significant uncertainty remains about the timing and strength of the recovery. It is likely that the full picture of the COVID–19 pandemic's impact on housing markets will not be known until well after the virus is contained. While the Enterprises showed strong goals performance in 2020 before the onset of the COVID–19 pandemic, it is unclear whether this will continue in the light of evolving market conditions and continued tightening of underwriting by lenders.

Thus, while recent Enterprise performance on the housing goals has tended to exceed the benchmark levels set by FHFA, the economic disruption and uncertainty seen so far in 2020 support keeping the levels unchanged from 2018–2020.

Past Performance of the Enterprises

Table 1 provides the annual performance of both Enterprises on the single-family housing goals between 2010 and 2019.[17] The performance of the Enterprises in the two most recent years (2018 and 2019) shows that both Enterprises exceeded the benchmark levels set by FHFA for each of the single-family housing goals.

While the final determinations of Enterprise goal compliance for 2019 are pending FHFA's determination of the market level based on HMDA data, both Enterprises report that their performance exceeded the benchmark levels, continuing the recent trend of Enterprise performance above the benchmark levels for the single-family housing goals for 2018–2020.

TABLE 1—ENTERPRISE SINGLE-FAMILY HOUSING GOALS PERFORMANCE (2010-2019)

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Low-Income Home Purchase Goal										
Actual Market	27.2	26.5	26.6	24	22.8	23.6	22.9	24.3	25.5	TBD
Benchmark	27	27	23	23	23	24	24	24	24	24
Fannie Mae Performance	*25.1	*25.8	25.6	23.8	23.5	*23.5	22.9	25.5	28.2	27.8
Freddie Mac Performance	27.8	*23.3	24.4	*21.8	*21	*22.3	23.8	*23.2	25.8	27.4
Very Low-Income Home Purchase Goal										
Actual Market	8.1	8	7.7	6.3	5.7	5.8	5.4	5.9	6.5	TBD
Benchmark	8	8	7	7	7	6	6	6	6	6
Fannie Mae Performance	*7.2	*7.6	7.3	*6	5.7	*5.6	*5.2	5.9	6.7	6.5
Freddie Mac Performance	8.4	*6.6	7.1	*5.5	*4.9	*5.4	5.7	*5.7	6.3	6.8
Low-Income Areas Home Purchase Goal										
Actual Market	24	22	23.2	22.1	22.1	19.8	19.7	21.5	22.6	TBD
Benchmark	24	24	20	21	18	19	17	18	18	19
Fannie Mae Performance	24.1	22.4	22.3	21.6	22.7	20.4	20.2	22.9	25.1	24.5
Freddie Mac Performance	*23.8	*19.2	20.6	*20	20.1	19	19.9	20.9	22.6	22.9
Low-Income Areas Home Purchase Subgoal										
Actual Market	12.1	11.4	13.6	14.2	15	15.2	15.9	17.1	18	TBD
Benchmark	13	13	11	11	11	14	14	14	14	14
Fannie Mae Performance	12.4	11.6	13.1	14	15.5	15.6	16.2	18.3	20.1	19.5
Freddie Mac Performance	*10.8	*9.2	11.4	12.3	13.6	14.5	15.6	16.4	17.3	18.0
Low-Income Refinance Goal										
Actual Market	20.2	21.5	22.3	24.3	25	22.5	19.8	25.4	30.7	TBD
Benchmark	21	21	20	20	20	21	21	21	21	21
Fannie Mae Performance	20.9	23.1	21.8	24.3	26.5	22.1	*19.5	24.8	31.2	23.8
Freddie Mac Performance	22	23.4	22.4	24.1	26.4	22.8	21	24.8	27.3	22.4

*Numbers marked with asterisks are preliminary numbers reported by the Enterprises.

Tables 2 through 5 provide additional detail on the recent performance of the Enterprises for each of the goals and the subgoal. The tables show the number as well as the share of goal-qualifying loans that the Enterprises acquired from 2013–2019. In 2018 and 2019, the Enterprises increased the number of goals-qualifying loans they acquired at the same time that their overall single-family mortgage purchase volume increased.

TABLE 2—LOW-INCOME HOME PURCHASE GOAL

Year	Performance						
	2013	2014	2015	2016	2017	2018	2019
Actual Market	24.0%	22.8%	23.6%	22.9%	24.3%	25.5%	TBD
Benchmark	23%	23%	24%	24%	24%	24%	24%
Fannie Mae Performance:							

[17] The 2019 data is preliminary data reported by the Enterprises. FHFA will make the official determinations on Enterprise performance under the 2019 housing goals later in 2020.

TABLE 2—LOW-INCOME HOME PURCHASE GOAL—Continued

Year	Performance						
	2013	2014	2015	2016	2017	2018	2019
Low-Income Home Purchase Mortgages	193,660	177,846	188,891	221,628	263,296	294,559	*298,702
Total Home Purchase Mortgages	814,066	757,870	802,432	966,800	1,032,567	1,044,098	*1,075,032
Low-Income % of Home Purchase Mortgages	23.8%	23.5%	23.5%	22.9%	25.5%	28.21/o	*27.8%
Freddie Mac Performance:							
Low-Income Home Purchase Mortgages	93,425	108,948	129,455	153,434	165,555	199,429	*235,811
Total Home Purchase Mortgages	429,086	519,731	579,340	644,988	713,901	774,394	*860,669
Low-Income % of Home Purchase Mortgages	21.8%	21.0%	22.3%	23.8%	23.2%	25.8%	*27.4%

*Numbers marked with asterisks are preliminary numbers reported by the Enterprises.

TABLE 3—VERY LOW-INCOME HOME PURCHASE GOAL

Year	Performance						
	2013	2014	2015	2016	2017	2018	2019
Actual Market	6.30%	5.70%	5.80%	5.40%	5.90%	6.50%	TBD
Benchmark	7%	7%	6%	6%	6%	6%	6%
Fannie Mae Performance:							
Very Low-Income Home Purchase Mortgages	48,810	42,872	45,022	49,932	60,561	69,952	*70,214
Total Home Purchase Mortgages	814,066	757,870	802,432	966,800	1,032,567	1,044,098	*1,075,032
Very Low-Income % of Home Purchase Mortgages	6.0%	5.7%	5.6%	5.2%	5.9%	6.7%	*6.5%
Freddie Mac Performance:							
Very Low-Income Home Purchase Mortgages	23,705	25,232	31,146	36,837	40,848	48,823	*58,136
Total Home Purchase Mortgages	429,086	519,731	579,340	644,988	713,901	774,394	*860,669
Very Low-Income % of Home Purchase Mortgages	5.5%	4.9%	5.4%	5.7%	5.7%	6.3%	*6.8%

*Numbers marked with asterisks are preliminary numbers reported by the Enterprises.

TABLE 4—LOW-INCOME AREAS HOME PURCHASE SUBGOAL

Year	Performance						
	2013	2014	2015	2016	2017	2018	2019
Actual Market	14.2%	15.2%	15.2%	15.9%	17.1%	18.0%	TBD
Benchmark	11%	11%	14%	14%	14%	14%	14%
Fannie Mae Performance:							
Low-Income Area Home Purchase Mortgages	86,430	91,691	99,723	125,956	152,102	167,265	*166,709
High-Minority Area Home Purchase Mortgages	27,425	25,650	25,349	30,535	36,942	42,099	*42,732
Subgoal-Qualifying Total Home Purchase Mortgages	113,855	117,341	125,072	156,491	189,044	209,364	*209,441
Total Home Purchase Mortgages	814,066	757,870	802,432	966,800	1,032,567	1,044,098	*1,075,032
Low-Income Area % of Home Purchase Mortgages	14.0%	15.5%	15.6%	16.2%	18.3%	20.1%	*19.5%
Freddie Mac Performance:							
Low-Income Area Home Purchase Mortgages	40,444	55,987	67,172	80,805	94,961	106,815	*123,953
High-Minority Area Home Purchase Mortgages	12,177	14,808	16,601	19,788	22,190	27,310	*30,770

TABLE 4—LOW-INCOME AREAS HOME PURCHASE SUBGOAL—Continued

Year	Performance						
	2013	2014	2015	2016	2017	2018	2019
Subgoal-Qualifying Total Home Purchase Mortgages	52,621	70,795	83,773	100,593	117,151	134,125	*154,723
Total Home Purchase Mortgages	429,086	519,731	579,340	644,988	713,901	774,394	*860,669
Low-Income Area % of Home Purchase Mortgages	12.3%	13.6%	14.5%	15.6%	16.4%	17.3%	*18.0%

*Numbers marked with asterisks are preliminary numbers reported by the Enterprises.

TABLE 5—LOW-INCOME REFINANCE GOAL

Year	Performance						
	2013	2014	2015	2016	2017	2018	2019
Actual Market	24.3%	25.0%	22.5%	19.8%	25.4%	30.7%	TBD
Benchmark	20%	20%	21%	21%	21%	21%	21%
Fannie Mae Performance:							
Low-Income Refinance Mortgages	531,611	222,329	231,380	248,698	223,768	196,230	*234,249
Total Refinance Mortgages	2,186,541	840,506	1,045,258	1,274,342	902,123	629,816	*985,932
Low-Income % of Refinance Mortgages	24.3%	26.5%	22.1%	19.5%	24.8%	31.2%	*23.8%
Freddie Mac Performance:							
Low-Income Refinance Mortgages	320,962	131,921	182,594	174,708	143,475	104,843	*159,322
Total Refinance Mortgages	1,331,034	514,936	800,369	830,888	578,548	384,593	*712,376
Low-Income % of Refinance Mortgages	24.1%	25.6%	22.8%	21.0%	24.8%	27.3%	*22.4%

*Numbers marked with asterisks are preliminary numbers reported by the Enterprises.

Proposed Benchmark Levels for the Single-Family Housing Goals for 2021

FHFA is proposing to establish the benchmark levels for each of the single-family housing goals and the subgoal for 2021 at the same levels that applied for 2018–2020. While recent Enterprise performance and market data have tended to exceed the established benchmark levels, FHFA expects that both the market levels and Enterprise performance could decline in 2021 due to impacts related to economic disruption caused by the COVID–19 pandemic. Information on Enterprise goals performance remains confidential until it is reported after the end of the year. However, FHFA monitors this confidential information on a regular basis. FHFA recognizes that the performance trends in the first half of 2020 reflect disruption due to COVID–19, and FHFA expects this to continue into 2021. Based on the above factors, FHFA believes that extending the benchmark levels from 2020 to 2021 will provide achievable yet challenging targets for the Enterprises.

V. Multifamily Housing Goals

The Safety and Soundness Act requires FHFA to consider the following six factors in setting the multifamily housing goals:

1. National multifamily mortgage credit needs and the ability of the Enterprises to provide additional liquidity and stability for the multifamily mortgage market;
2. The performance and effort of the Enterprises in making mortgage credit available for multifamily housing in previous years;
3. The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;
4. The ability of the Enterprises to lead the market in making multifamily mortgage credit available, especially for multifamily housing affordable to low-income and very low-income families;
5. The availability of public subsidies; and
6. The need to maintain the sound financial condition of the Enterprises.[18]

FHFA has considered each of these statutory factors in setting the proposed benchmark levels for each of the multifamily goals.

[18] 12 U.S.C. 4563(a)(4).

The multifamily housing goals are measured based on the total volume of affordable multifamily mortgage purchases rather than on a percentage of multifamily mortgage purchases. Unlike the single-family housing goals, performance on the multifamily housing goals is measured solely against a benchmark level, without any retrospective market measure. The absence of a retrospective market measure for the multifamily housing goals results, in part, from the lack of comprehensive data about the multifamily mortgage market. Unlike the single-family market, for which HMDA provides a reasonably comprehensive dataset about single-family mortgage originations each year, the multifamily market (including the affordable multifamily market segment) has no comparable source. Consequently, it can be difficult to correlate different datasets that usually rely on different reporting formats.

Another difference between the single-family and multifamily goals is that there are separate single-family housing goals for home purchase and refinancing mortgages, while the multifamily goals include all Enterprise multifamily mortgage purchases,

regardless of the purpose of the loan. In addition, unlike the single-family housing goals, the multifamily housing goals are measured based on the total volume of affordable multifamily mortgage purchases rather than on a percentage of multifamily mortgage purchases. The use of total volumes, which FHFA measures by the number of eligible units, rather than percentages of each Enterprises' overall multifamily purchases, requires that FHFA take into account the expected size of the overall multifamily mortgage market and the affordable share of the market, as well as the expected volume of the Enterprises' overall multifamily purchases and the affordable share of those purchases. The lack of comprehensive data for the multifamily mortgage market is even more acute with respect to the segments of the market that are targeted to low-income families, defined as families with incomes at or below 80 percent of AMI, and very low-income families, defined as families with incomes at or below 50 percent of AMI. As required by the Safety and Soundness Act, FHFA determines affordability of multifamily units based on a unit's rent and utility expenses not exceeding 30 percent of the area median income standard for low- and very low-income families.[19]

Current Economic Conditions, National Housing Needs, and Recent Market Developments

Even as late as February 2020, the multifamily originations market appeared as strong as it had been in 2019. At that time, FHFA noted a number of trends that have continued for multiple years, including the continued market focus on the construction of high-end, luxury apartments and the steady decline in the number of low-cost rentals. While completed rentals nearly reached a 30-year high in 2018 with an addition of 360,000 units, supply dropped by 340,000 units between 2016 and 2017.[20] Nationwide, there has been a loss of four million low-cost rental units (rents less than $800 per month) since 2011.[21] There is a particularly acute shortfall of affordable units for extremely low-income renters (earning up to 30 percent of area median income) that was acknowledged as a persistent problem even before the COVID–19 pandemic began. For instance, as a recent report from the Department of Housing and Urban Development[22] notes, it is increasingly difficult for housing developers and landlords to provide decent rental housing at rates that are affordable to American working families and more vulnerable households. In 2017, the most recent year for which such data are available, only 59 affordable units were available per 100 very low-income renter households, and only 40 units were available per 100 extremely low-income renter households.

The full impact on the stock of low-cost rental units in the wake of the COVID–19 pandemic and broader economic downturn is not yet known. In the short-term, the pandemic might exacerbate the already-constrained supply as lower housing mobility rates limit the number of low-cost options for renters and current residents stay in place. As one study using the 2018 American Community Survey data shows, demand for low-cost units was already high while their availability was extremely low.[23] Additional tightening at the low end of the market could pose significant affordability challenges to low- and middle-income renters.

Further, renters living in single-family homes and smaller multifamily buildings, along with the owners of those properties, are more likely to be negatively affected by the COVID–19 economic downturn. According to one study, over half of renters with at-risk wages[24] due to the pandemic live in single-family rental housing with 1–4 units. The same study estimates that nearly 20 percent of renters in small multifamily (5 to 50 units) dwellings may have difficulty paying full rent if at-risk wages are lost, compared to 12 percent of renters living in larger dwellings. This could, in turn, make it difficult for the owners of those properties, who are more likely to be small, individual investors, to remain financially stable through the pandemic.[25]

Conservatorship Scorecard Caps

Enterprise performance on the multifamily housing goals is heavily influenced by the caps on total multifamily business that FHFA has established as conservator of the Enterprises. The multifamily volume caps are intended to further FHFA's conservatorship goal: Maintaining the presence of the Enterprises as a backstop for the multifamily finance market, while not impeding the participation of private capital. The multifamily volume caps reflect an Enterprise share of the multifamily origination market that FHFA has determined to be an appropriate market share for the Enterprises during normal market conditions. The multifamily volume caps are intended to prevent the Enterprises from crowding out other capital sources and restrain the rapid growth of the Enterprises' multifamily businesses that started in 2011.

In September 2019, FHFA established multifamily loan purchase caps at $100 billion for each Enterprise during the five quarters beginning on October 1, 2019, and ending on December 31, 2020. The new cap framework requires that each Enterprise meet a target of 37.5 percent of its multifamily business as mission-driven, affordable housing. There is significant overlap between the types of multifamily mortgages that count toward the conservatorship scorecard target of 37.5 percent and the multifamily mortgages that contribute to the performance of the Enterprises under the affordable housing goals.

While the conservatorship scorecard caps and target level for mission-driven loans play a significant role in determining the multifamily purchase volume and affordable share for the Enterprise multifamily businesses, the multifamily housing goals target specific segments of the multifamily business and ensure appropriate Enterprise focus on those segments as required by the Safety and Soundness Act. In proposing benchmark levels for the Enterprise housing goals, FHFA has considered the required statutory factors and is proposing benchmark levels that would be achievable if the conservatorship scorecard caps and target levels for 2021 are similar to the conservatorship scorecard limits in effect for 2020. If the conservatorship scorecard has established the multifamily purchase

[19] 12 U.S.C. 4563(c).

[20] Joint Center for Housing Studies of Harvard University, ''The State of the Nation's Housing 2019,'' available at *www.jchs.harvard.edu/research/state_nations_housing.*

[21] *Id.*

[22] U.S. Department of Housing and Urban Development, ''Worst Case Housing Needs: 2019 Report to Congress'', June 19, 2020 accessed on 7/10/2020 at *https://www.huduser.gov/PORTAL/sites/default/files/pdf/worst-case-housing-needs-2020.pdf.*

[23] Joint Center for Housing Studies of Harvard University, ''The Continuing Decline of Low-Cost Rentals,'' May 11, 2020 accessed on 6/30/2020 at *https://www.jchs.harvard.edu/blog/the-continuing-decline-of-low-cost-rentals/.*

[24] ''At risk wages'' are wages associated with ''At Risk Jobs'' which are defined as those in services, retail, recreation, transportation and travel, and oil extraction. Joint Center for Housing Studies of Harvard University, ''Pandemic Will Worsen Housing Affordability for Service, Retail, and Transportation Workers'' March 30, 2020 accessed on 6/30/2020 at *https://www.jchs.harvard.edu/blog/pandemic-will-worsen-housing-affordability-for-service-retail-and-transportation-workers/.*

[25] Joint Center for Housing Studies of Harvard University, ''COVID–19 Rent Shortfalls in Small Buildings,'' May 26, 2020 accessed on 6/30/2020 at *https://www.jchs.harvard.edu/blog/covid-19-rent-shortfalls-in-small-buildings/.*

volume caps applicable for 2021 at the time FHFA publishes a final rule setting benchmark levels for the multifamily housing goals, FHFA may adjust the benchmark levels based on those purchase volume caps.

Past Performance on the Multifamily Low-Income Housing Goal

The multifamily low-income housing goal is based on the total number of rental units in multifamily properties financed by mortgages purchased by the Enterprises that are affordable to low-income families, defined as families with incomes less than or equal to 80 percent of the area median income. Since 2016, each Enterprise has performed significantly above the benchmark level for the multifamily low-income housing goal each year.

TABLE 6—LOW-INCOME MULTIFAMILY GOAL

	Performance							
Year	2012	2013	2014	2015	2016	2017	2018	2019
Fannie Mae Benchmark ...	285,000	265,000	250,000	300,000	300,000	300,000	315,000	315,000
Freddie Mac Benchmark ..	225,000	215,000	200,000	300,000	300,000	300,000	315,000	315,000
Fannie Mae Performance:								
Low-Income Multi-family Units	375,924	326,597	262,050	307,510	352,368	401,145	421,813	*384,572
Total Multifamily Units	501,256	430,751	372,072	468,798	552,785	630,868	628,230	*596,137
Low-Income % Total	75.0%	75.8%	70.4%	65.6%	63.7%	63.6%	67.1%	*64.5%
Freddie Mac Performance:								
Low-Income Multi-family Units	298,529	254,628	273,434	379,042	406,958	408,096	474,062	*455,451
Total Multifamily Units	377,522	341,490	366,377	514,275	597,399	630,037	695,587	*661,417
Low-Income % of Total Units	79.1%	74.6%	74.6%	73.7%	68.1%	64.8%	68.2%	*68.9%

*Numbers marked with asterisks are preliminary numbers reported by the Enterprises.

Past Performance on the Multifamily Very Low-Income Housing Subgoal

The multifamily very low-income housing subgoal includes units affordable to very low-income families, defined as families with incomes no greater than 50 percent of area median income. Both Enterprises have surpassed the benchmark level for the multifamily very low-income housing subgoal by a significant margin in recent years.

TABLE 7—VERY LOW-INCOME MULTIFAMILY GOAL

	Performance							
Year	2012	2013	2014	2015	2016	2017	2018	2019
Fannie Mae Benchmark ...	80,000	70,000	60,000	60,000	60,000	60,000	60,000	60,000
Freddie Mac Benchmark ..	59,000	50,000	40,000	60,000	60,000	60,000	60,000	60,000
Fannie Mae Performance:								
Very Low-Income Multifamily Units	100,878	78,071	60,542	69,078	65,910	82,674	80,891	*78,835
Total Multifamily Units	501,256	430,751	372,072	468,798	552,785	630,868	628,230	*596,137
Very Low-Income % of Total Units	21.7%	18.1%	16.3%	14.7%	11.9%	13.1%	12.9%	*13.2%
Freddie Mac Performance:								
Very Low-Income Multifamily Units	60,084	56,742	48,689	76,935	73,030	92,274	105,612	*112,785
Total Home Purchase Mortgages	377,522	341,490	366,377	514,275	597,399	630,037	695,587	*661,417
Very Low-Income % of Total Units	15.9%	16.6%	13.3%	15.0%	12.2%	14.6%	15.2%	*17.1%

*Numbers marked with asterisks are preliminary numbers reported by the Enterprises.

Past Performance on the Small Multifamily Low-Income Housing Subgoal

The small multifamily low-income housing subgoal is based on the total number of units in small multifamily properties financed by mortgages purchased by the Enterprises that are affordable to low-income families, defined as families with incomes less than or equal to 80 percent of the area median income. A small multifamily property is defined as a property with 5 to 50 units. Both Enterprises have met the small multifamily low-income housing subgoal each year in recent years.

TABLE 8—SMALL (5–50) LOW-INCOME MULTIFAMILY GOAL

Year	Performance							
	2012	2013	2014	2015	2016	2017	2018	2019
Small Low-Income Multifamily Benchmark	.....	.....	.....	6,000	8,000	10,000	10,000	10,000
Fannie Mae Performance:								
Small Low-Income Multifamily Units	16,801	13,827	6,732	6,731	9,312	12,043	11,890	* 17,782
Total Small Multifamily Units	26,479	21,764	11,880	11,198	15,211	20,375	17,894	* 25,565
Low-Income % of Total Small Multifamily Units	63.5%	63.5%	56.7%	60.1%	61.2%	59.1%	66.4%	* 69.6%
Freddie Mac Performance:								
Small Low-Income Multifamily Units	829	1,128	2,076	12,801	22,101	39,473	39,353	* 34,847
Total Small Multifamily Units	2,194	2,375	4,659	21,246	33,984	55,116	53,893	* 46,862
Low-Income % of Total Small Multifamily Units	37.8%	47.5%	44.6%	60.3%	65.0%	71.6%	73.0%	* 74.4%

* Numbers marked with asterisks are preliminary numbers reported by the Enterprises.

Proposed Benchmark Levels for the Multifamily Housing Goals for 2021

FHFA is proposing to establish the benchmark levels for each of the multifamily housing goal and subgoals for 2021 at the same levels that applied for 2018–2020. In proposing the benchmark levels for the multifamily low-income housing goal and the multifamily very low-income housing goal, FHFA considered the statutory factors including current economic conditions, national housing needs, recent market developments, the most recent conservatorship scorecard cap levels, and the past performance of the Enterprises in meeting each goal.

Due to the relatively low volume of small multifamily loans purchased by each Enterprise, the conservatorship scorecard cap has less impact on the ability of the Enterprises to meet the small multifamily low-income housing goal. Based on the recent performance of the Enterprises on the goal, FHFA believes the benchmark levels for 2018–2020 continue to be appropriate for 2021 to ensure that the Enterprises maintain a meaningful presence in the market for small multifamily loans.

While the recent performance of the Enterprises on the multifamily housing goals suggests that each Enterprise may be able to meet a higher benchmark level, FHFA has also considered a variety of factors including recent market trends and especially the economic disruption due to the COVID–19 emergency that support keeping the benchmark levels for the multifamily housing goals at the same level as the 2018–2020 goals. Based on the above factors, FHFA believes that extending the benchmark levels from 2020 to 2021 [26] will provide achievable yet challenging targets for the Enterprises.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). The proposed rule does not contain any information collection requirement that would require OMB approval under the Paperwork Reduction Act. Therefore, FHFA has not submitted the rule to OMB for review.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities because the regulation applies only to Fannie Mae and Freddie Mac, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, under the authority of 12 U.S.C. 4511, 4513, and 4526, FHFA proposes to amend part 1282 of Title 12 of the Code of Federal Regulations as follows:

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER E—HOUSING GOALS AND MISSION

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

■ 1. The authority citation for part 1282 continues to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566.

[26] The benchmark level for the Low-Income Areas Purchase goal will be set by FHFA notice in 2021 pursuant to 12 CFR 1282.12(e). The Low-Income Areas Purchase goal has a disaster component that is dependent on the Federal disaster declarations in place at the beginning of each calendar year. The regulation defines ''designated disaster area'' as ''any census tract that is located in a county designated by the federal government as adversely affected by a declared major disaster administered by FEMA, *where individual assistance payments were authorized by FEMA*.'' 12 CFR 1282.1 (emphasis added). While most of the country has been declared a disaster area by reason of COVID–19, those declarations have not been accompanied by FEMA authorizations of individual assistance payments.

■ 2. Section 1282.12 is amended by revising paragraphs (c)(2), (d)(2), (f)(2), and (g)(2) to read as follows:

§ 1282.12 Single-family housing goals.

* * * * *

(c) * * *

(2) The benchmark level, which for 2021 shall be 24 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(d) * * *

(2) The benchmark level, which for 2021 shall be 6 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

* * * * *

(f) * * *

(2) The benchmark level, which for 2021 shall be 14 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(g) * * *

(2) The benchmark level, which for 2021 shall be 21 percent of the total number of refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

* * * * *

■ 3. Section 1282.13 is amended by revising paragraphs (b) through (d) to read as follows:

§ 1282.13 Multifamily special affordable housing goal and subgoals.

* * * * *

(b) *Multifamily low-income housing goal.* The benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be at least 315,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by the Enterprise for 2021.

(c) *Multifamily very low-income housing subgoal.* The benchmark level for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be at least 60,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by the Enterprise for 2021.

(d) *Small multifamily low-income housing subgoal.* The benchmark level for each Enterprise's purchases of mortgages on small multifamily properties affordable to low-income families shall be at least 10,000 dwelling units affordable to low-income families in small multifamily properties financed by mortgages purchased by the Enterprise for 2021.

Mark A. Calabria

Director, Federal Housing Finance Agency.

[FR Doc. 2020–15959 Filed 8–12–20; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2020–0733; Project Identifier AD–2020–00990–E]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain General Electric Company (GE) GE90–110B1 and GE90–115B model turbofan engines. This proposed AD was prompted by the detection of melt-related freckles in the billet, which may reduce the life limits of certain high-pressure turbine (HPT) rotor stage 2 disks and certain rotating compressor discharge pressure (CDP) HPT seals. This proposed AD would require replacement of the affected HPT rotor stage 2 disks and rotating CDP HPT seals. 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 September 14, 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 General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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–2020–0733; 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, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; fax: (781) 238–7999; email: *Mehdi.Lamnyi@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–2020–0733; Project Identifier AD–2020–00990–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

The FAA has been informed that GE has communicated with affected operators regarding the proposed corrective action for this unsafe condition. As a result, affected operators are already aware of the proposed corrective action and, in some cases, have already performed the actions proposed in this AD. Therefore, the FAA has determined that a 30-day comment period is appropriate given the proposed short cyclic compliance period to correct the unsafe condition on the affected GE90 model turbofan engines.

Except for Confidential Business Information as described in the following paragraph, and other information as described in 14 CFR 11.35, 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 proposal.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA was notified of the detection of melt-related freckles in the billet during the forging inspection of HPT disks, which may reduce the life limits of certain HPT rotor stage 2 disks and certain rotating CDP HPT seals. The inspection process in place at the time of production did not identify these freckles. The manufacturer determined the need to reduce the life limits of the affected HPT rotor stage 2 disks and rotating CDP HPT seals. This AD requires removal of these affected parts before reaching their new life limits. This condition, if not addressed, could result in uncontained release of both the HPT rotor stage 2 disk and the rotating CDP HPT seal, damage to the engine, and damage to the aircraft.

FAA's Determination

The FAA is proposing this AD because the agency has determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information

The FAA reviewed GE Service Bulletin (SB) GE90–100 S/B 72–0845, Revision 01, dated July 17, 2020. The SB describes procedures for removal of the HPT rotor stage 2 disk and the rotating CDP HPT seal from service. 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 require replacement of certain HPT rotor stage 2 disks and certain rotating CDP HPT seals.

Interim Action

The FAA considers this proposed AD an interim action. This issue is still under investigation by the manufacturer and, depending on the results of that investigation, the FAA may consider further rulemaking action.

Costs of Compliance

The FAA estimates that this AD, as proposed, would affect 1 engine installed on an airplane of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace the HPT rotor stage 2 disk.	1,500 work-hours × $85 per hour = $127,500	$565,600	$693,100	$693,100
Remove and replace the rotating CDP HPT seal.	600 work-hours × $85 per hour = $51,000	209,900	260,900	0

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):

General Electric Company: Docket No. FAA–2020–0733; Project Identifier AD–2020–00990–E.

(a) Comments Due Date

The FAA must receive comments by September 14, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company GE90–110B1 and GE90–115B model turbofan engines with:

(1) A high-pressure turbine (HPT) rotor stage 2 disk, part number (P/N) 2505M73P03, and serial number (S/N) TMT1BA38 or TMT1BA41, installed; or

(2) a rotating compressor discharge pressure (CDP) HPT seal, P/N 2479M03P01, and S/N GEE1H7GH or GEE1H7JJ, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by the detection of melt-related freckles in the billet, which may reduce the life limits of certain HPT rotor stage 2 disks and certain rotating CDP HPT seals. The FAA is issuing this AD to prevent uncontained release of both the HPT rotor stage 2 disk and the rotating CDP HPT seal. The unsafe condition, if not addressed, could result in damage to the engine and damage to the aircraft.

(f) Compliance

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

(g) Required Actions

(1) Before the affected HPT rotor stage 2 disk or the rotating CDP HPT seal listed in Table 1 to paragraph (g) of this AD (''Table 1'') accumulates the cycles since new (CSN) threshold in Table 1, or at the next engine shop visit, whichever occurs first after the effective date of this AD, remove the affected part from service and replace it with a part eligible for installation.

(2) If the affected HPT rotor stage 2 disk or rotating CDP HPT seal has already exceeded the CSN threshold in Table 1, remove the affected part before further flight and replace with a part eligible for installation.

Table 1 to Paragraph (g): Affected Parts and CSN Threshold

Part Name	Part Number	Part S/N	CSN Threshold
Rotating CDP HPT seal	2479M03P01	GEE1H7GH	3,500
Rotating CDP HPT seal	2479M03P01	GEE1H7JJ	3,500
HPT rotor stage 2 disk	2505M73P03	TMT1BA38	2,418
HPT rotor stage 2 disk	2505M73P03	TMT1BA41	1,466

(h) Definition

(1) For the purpose of this AD, a part eligible for installation is any HPT stage 2 disk or rotating CDP HPT seal with an S/N that is not listed in Table 1 to paragraph (g).

(2) For the purpose of this AD, an engine shop visit is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation of the engine without subsequent engine maintenance does not constitute an engine shop visit.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO 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)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(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

(1) For more information about this AD, contact Mehdi Lamnyi, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7743; fax: (781) 238–7999; email: *Mehdi.Lamnyi@faa.gov.*

(2) For service information identified in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ae.ge.com;* website: *www.ge.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued on August 6, 2020.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2020–17594 Filed 8–12–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0709; Airspace Docket No. 20–AEA–2]

RIN 2120–AA66

Proposed Amendment of V–6, V–30, V–58, V–119, and V–226 in the Vicinity of Clarion, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–6, V–30, V–58, V–119, and V–226 in the vicinity of Clarion, PA. The VOR Federal airway modifications are necessary due to the planned decommissioning of the VOR portion of the Clarion, PA, VOR/Distance Measuring Equipment (VOR/DME) navigation aid (NAVAID) which

provides navigation guidance for portions of the affected ATS routes. The Clarion VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before September 28, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0709; Airspace Docket No. 20–AEA–2 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0709; Airspace Docket No. 20–AEA–2) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0709; Airspace Docket No. 20–AEA–2.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

Availability and Summary of Documents for Incorporation by Reference

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

Background

The FAA is planning decommissioning activities for the VOR portion of the Clarion, PA, VOR/DME in February, 2021. The Clarion VOR is a candidate VOR identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082. Although the VOR portion of the Clarion, PA, VOR/DME is planned for decommissioning, the co-located DME portion of the NAVAID is being retained to support Next Generation Air Transportation System (NextGen) PBN flight procedure requirements.

The ATS route dependencies to the Clarion VOR/DME are VOR Federal airways V–6, V–30, V–58, V–119, and V–226. With the planned decommissioning of the VOR portion of the Clarion VOR/DME, the remaining ground-based NAVAID coverage in the areas is insufficient to enable the continuity of the affected VOR Federal airways. As such, proposed modifications to the affected VOR Federal airways would result in the existing gaps in V–6 and V–30 being extended and V–58, V–119, and V–226 being shortened.

To overcome the airway gaps and loss of airway segments, instrument flight rules (IFR) traffic could use adjacent ATS routes, including V–10, V–12, V–37, V–41, V–43, V–106, and V–115, or receive air traffic control (ATC) radar vectors to fly through or circumnavigate the affected area. IFR pilots equipped with area navigation (RNAV) PBN capabilities could also navigate point to point using the existing fixes that will

remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the airways through the affected area could also take advantage of the air traffic services previously listed.

Additionally, the V–58 description includes the exclusionary language, ''The airspace within R–4105 is excluded during times of use.'' That exclusion language was added to the airway description, effective March 10, 1988, and has been unchanged since (53 FR 2007; January 26, 1988). However, later that same year, the FAA published a rule in the **Federal Register** (53 FR 37544; September 27, 1988), effective October 20, 1988, that subdivided restricted area R–4105 into R–4105A and R–4105B. Then, in 2014, the FAA published a rule in the **Federal Register** (79 FR 61989; October 16, 2014), effective November 17, 2014, that removed R–4105A and R–4105B. Therefore, the restricted area exclusion language in the V–58 description is no longer required.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying VOR Federal airways V–6, V–30, V–58, V–119, and V–226. The planned decommissioning of the VOR portion of the Clarion, PA, VOR/DME NAVAID has made this action necessary. The proposed VOR Federal airway changes are outlined below.

V–6: V–6 currently extends between the Oakland, CA, VOR/DME and the DuPage, IL, VOR/DME; between the intersection of the Chicago Heights, IL, VOR/Tactical Air Navigation (VORTAC) 358° and Gipper, MI, VORTAC 271° radials (NILES fix) and the intersection of the Gipper, MI, VORTAC 092° and Litchfield, MI, VOR/DME 196° radials (MODEM fix); and between the Clarion, PA, VOR/DME and the La Guardia, NY, VOR/DME. The FAA proposes to remove the airway segment overlying the Clarion, PA, VOR/DME between the Clarion, PA, VOR/DME and the Philipsburg, PA, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–30: V–30 currently extends between the Badger, WI, VOR/DME and the Litchfield, MI, VOR/DME; and between the Clarion, PA, VOR/DME and the Solberg, NJ, VOR/DME. The FAA proposes to remove the airway segment overlying the Clarion, PA, VOR/DME between the Clarion, PA, VOR/DME and the Philipsburg, PA, VORTAC. The unaffected portions of the existing airway would remain as charted.

V–58: V–58 currently extends between the intersection of the Franklin, PA, VOR 176° and Clarion, PA, VOR/DME 222° radials (GRACE fix) and the Williamsport, PA, VOR/DME; and between the intersection of the Sparta, NJ, VORTAC 018° and Kingston, NY, VOR/DME 270° radials (HELON fix) and the Nantucket, MA, VOR/DME. The airspace within R–4105 is excluded during times of use. The FAA proposes to remove the airway segment between the Franklin, PA, VOR 176° and Clarion, PA, VOR/DME 222° radials (GRACE fix) and the Philipsburg, PA, VORTAC. Additionally, the restricted area exclusion language is proposed to be removed also. The unaffected portions of the existing airway would remain as charted.

V–119: V–119 currently extends between the Henderson, WV, VORTAC and the Clarion, PA, VOR/DME. The FAA proposes to remove the airway segment overlying the Clarion, PA, VOR/DME between the Indian Head, PA, VORTAC and the Clarion, PA, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V–226: V–226 currently extends between the intersection of the Franklin, PA, VOR 175° and Clarion, PA, VOR/DME 222° radials (GRACE fix) and the Stillwater, NJ, VOR/DME. The FAA proposes to remove the airway segment overlying the Clarion, PA, VOR/DME between the intersection of the Franklin, PA, VOR 175° and Clarion, PA, VOR/DME 222° radials (GRACE fix) and the Keating, PA, VORTAC. The unaffected portions of the existing airway would remain as charted.

The NAVAID radials in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The ATS routes listed in this document would be subsequently published in the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–6 [Amended]

From Oakland, CA; INT Oakland 039° and Sacramento, CA, 212° radials; Sacramento; Squaw Valley, CA; Mustang, NV; Lovelock, NV; Battle Mountain, NV; INT Battle Mountain 062° and Wells, NV, 256° radials; Wells; 5 miles, 40 miles, 98 MSL, 85 MSL, Lucin, UT; 43 miles, 85 MSL, Ogden, UT; 11 miles, 50 miles, 105 MSL, Fort Bridger, WY; Rock Springs, WY; 20 miles, 39 miles, 95 MSL, Cherokee, WY; 39 miles, 27 miles, 95 MSL, Medicine Bow, WY; INT Medicine Bow 106° and Sidney, NE, 291° radials; Sidney; North Platte, NE; Grand Island, NE; Omaha, IA; Des Moines, IA; Iowa City, IA; Davenport, IA; INT Davenport 087° and DuPage, IL, 255°

radials; to DuPage. From INT Chicago Heights, IL, 358° and Gipper, MI, 271° radials; Gipper; to INT Gipper 092° and Litchfield, MI, 196° radials. From Philipsburg, PA; Selinsgrove, PA; Allentown, PA; Solberg, NJ; INT Solberg 107° and Yardley, PA, 068° radials; INT Yardley 068° and La Guardia, NY, 213° radials; to La Guardia.

* * * * *

V–30 [Amended]

From Badger, WI; INT Badger 102° and Pullman, MI, 303° radials; Pullman; to Litchfield, MI. From Philipsburg, PA; Selinsgrove, PA; East Texas, PA; INT East Texas 095° and Solberg, NJ, 264° radials; to Solberg.

* * * * *

V–58 [Amended]

From Philipsburg, PA; to Williamsport, PA. From INT Sparta, NJ, 018° and Kingston, NY, 270° radials; Kingston; INT Kingston 095° and Hartford, CT, 269° radials; Hartford; Groton, CT; Sandy Point, RI; to Nantucket, MA.

* * * * *

V–119 [Amended]

From Henderson, WV; Parkersburg, WV; INT Parkersburg 067° and Indian Head, PA, 254° radials; to Indian Head.

* * * * *

V–226

From Keating, PA; Williamsport, PA; Wilkes-Barre, PA; to Stillwater, NJ.

* * * * *

Issued in Washington, DC, on August 7, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–17598 Filed 8–12–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0735; Airspace Docket No. 19–ANE–8]

RIN 2120–AA66

Proposed Amendment and Revocation of Air Traffic Service (ATS) Routes in the Vicinity of Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–141, and V–542, and revoke airways V–151 and V–496, due to the planned decommissioning of the Lebanon, NH, VOR/DME navigation aid which provides navigation guidance for segments of the routes. The Lebanon VOR/DME is planned for decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before September 28, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2020–0735; Airspace Docket No. 19–ANE–8 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the VOR Federal airway route structure in the northeastern United States to maintain the efficient flow of air traffic.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2020–0735; Airspace Docket No. 19–ANE–8 and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2020–0735; Airspace Docket No. 19–ANE–8''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210,

1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to amend VOR Federal airways V–141 and V–542, and to revoke airways V–151 and V–496, due to the planned decommissioning of the Lebanon, NH VOR/DME. An Area Navigation (RNAV) waypoint (WP) is being developed to be charted in the vicinity of the Lebanon VOR/DME location. The proposed changes are described below.

V–141: V–141 currently consists of two parts: first, extending between the Nantucket, MA, VOR/DME and the Boston, MA, VOR/DME; and second, extending between the Manchester, NH, VOR/DME and the Massena, NY, VORTAC. This proposal would remove the part between Manchester, NH, and Massena, NY. As amended, V–141 would extend between Nantucket, MA, and Boston, MA.

V–542: V–542 currently extends between the Elmira, NY, VOR/DME, and the Lebanon, NH, VOR/DME. The FAA proposes to remove the route segments of V–542 that extend between the Rockdale, NY, VOR/DME, and the Lebanon, NH, VOR/DME. As amended, V–542 would extend between Elmira, NY, and Rockdale, NY.

V–151: V–151 currently extends between the intersection of the Nantucket, MA, VOR/DME 334° and the Providence, RI VOR/DME 079° radials, and the Burlington, VT, VOR/DME. The FAA proposes to remove this entire route. A low altitude RNAV route is being developed to replace V–151.

V–496: V–496 currently extends between the Utica, NY, VORTAC, and the Kennebunk, ME, VOR/DME. This action proposes to remove the entire route.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be subsequently published in, or removed from, the Order.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–141 [Amended]

From Nantucket, MA; INT Nantucket 334° and Boston, MA, 138° radials; to Boston.

* * * * *

V–151 [Remove]

* * * * *

V–496 [Remove]

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V–542 [Amended]

From Elmira, NY; Binghamton, NY; to Rockdale, NY.

* * * * *

Issued in Washington, DC, on August 7, 2020.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2020–17689 Filed 8–12–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 645

[Docket No. FHWA–2019–0037]

RIN 2125–AF92

Broadband Infrastructure Deployment

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FHWA proposes to amend its regulations governing the accommodation of utilities on the right-of-way (ROW) of Federal-aid or direct Federal highway projects to implement requirements of the Consolidated Appropriations Act, 2018, for broadband infrastructure deployment. The requirements, which will apply to each State that receives Federal funds under Chapter 1 of Title 23, United States Code (U.S.C.), aim to facilitate the installation of broadband infrastructure.

DATES: Comments must be received on or before September 14, 2020.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

• *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

All submissions should include the agency name and the docket number that appears in the heading of this document or the Regulatory Identification Number (RIN) for the rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Johnston, Office of Preconstruction, Construction and Pavements (HICP–10), (202) 591–5858, or via email at *Julie.Johnston@dot.gov,* or Mr. Lev Gabrilovich, Office of the Chief Counsel (HCC–30), (202) 366–3813, or via email at *Lev.Gabrilovich@dot.gov.* Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at *http://www.regulations.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *http://www.archives.gov/federal-register* and the Government Publishing Office's web page at: *http://www.govinfo.gov/app/frtoc/today.*

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period and after DOT has had the opportunity to review the comments submitted.

Background

FHWA recognizes that it is in the public interest for utility facilities to use jointly the ROW of public roads and streets when such use and occupancy do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and does not conflict with Federal, State, or local laws and regulations. The opportunity for such joint use avoids the additional cost of acquiring separate ROW for the exclusive accommodation of utilities. As a result, the ROW of highways is often used to provide public services to abutting residents as well as to serve conventional highway needs.

Utility facilities, unlike most other fixed objects that may be present within the highway environment, are not owned nor are their operations directly controlled by State or local public agencies. Federal laws and FHWA regulations contained in 23 U.S.C. 109, 111, 116, and 123 and 23 CFR parts 1, 635, 645, and 710 regulate the accommodation, relocation, and reimbursement of utilities located within the highway ROW. State departments of transportation (State DOT) are required to develop Utility Accommodation policies that meet these regulations. 23 CFR 645.211.

Legal Authority and Statement of the Problem

The Consolidated Appropriations Act, 2018 (Pub. L. 115–141), Division P, Title VII (''MOBILE NOW Act''), Section 607, Broadband Infrastructure Deployment (47 U.S.C. 1504), directs the Secretary of Transportation to promulgate regulations to ensure that States meet specific registration, notification, and coordination requirements to facilitate broadband infrastructure deployment in the ROW of applicable Federal-aid highway projects. Accordingly, FHWA proposes to revise its regulations governing the accommodation of utilities to implement the Section 607 requirements. This rulemaking is required by statute. It addresses the need to update FHWA regulations to implement the Section 607 requirements.

MOBILE NOW Act Direction for Broadband Deployment

Once the regulations take effect, the Section 607 requirements will apply to each State that receives funds under Chapter 1 of Title 23, U.S.C., including the District of Columbia and the Commonwealth of Puerto Rico. The MOBILE NOW Act defines the term ''State'' to mean a State, the District of Columbia, and the Commonwealth of Puerto Rico. 49 U.S.C. 1504(a)(4). The MOBILE NOW Act defines ''appropriate State agency,'' as ''a State governmental agency that is recognized by the executive branch of the State as having the experience necessary to evaluate and carry out projects relating to the proper and effective installation and operation of broadband infrastructure.'' 47 U.S.C. 1504(a)(1). In addition, the MOBILE NOW Act defines ''broadband infrastructure'' as ''any buried, underground, or aerial facility, and any wireless or wireline connection, that enables users to send and receive voice, video, data, graphics, or any combination thereof,'' 47 USCC 1504(a)(2), and ''broadband infrastructure entity'' as ''any entity that installs, owns, or operates broadband infrastructure and provides broadband services in a manner consistent with the public interest, convenience, and necessity, as determined by the State.'' 47 U.S.C. 1504(a)(3).

Discussion of General Requirements and Limitations

In proposed § 645.307(a), FHWA sets out four new requirements of the MOBILE NOW Act. Proposed § 645.307(a)(1) requires that the State DOT, in consultation with appropriate State agencies, identify a broadband utility coordinator who is responsible for facilitating the infrastructure ROW efforts within the State. Under the proposal, the coordinator may reside in the State DOT or in another State agency and may have additional responsibilities.[1] The primary burden of this provision is imposed on States, though States will likely vary considerably in their implementation of it. Some States, for example, may add this responsibility onto the role of an existing employee, while other States may hire a new person to assume this role. The FHWA assumes that another cost to States would be the cost to update their websites to provide information about the coordinator and their work. The FHWA expects that the duties of a broadband utility coordinator would be less than a full-time commitment, assuming roughly 30 percent of an employee's time. This provision would also result in time burdens for FHWA employees, including time to disseminate information and to prepare and present

[1] The proposed requirements are to be implemented by State DOTs in consultation with appropriate State agencies. While FHWA expects employees of other State agencies to be involved, FHWA assumes that the majority of the time burdens imposed by this rule would accrue to State DOTs.

one external and one internal Webinar to explain the proposed requirements to State DOTs, and to conduct any follow-up activities related to the Webinars.

Consistent with Section 607 of the MOBILE NOW Act, FHWA is proposing in § 645.307(a)(2) to require the State DOT, in consultation with appropriate State agencies, to establish a registration process for broadband infrastructure entities that seek to be included. The FHWA believes that States may vary considerably in their approach for implementing this provision, and that States will likely choose an approach that fits with their existing processes. The FHWA assumes that States will spend time implementing this provision to establish the process, update their utility accommodation policy, notify broadband companies, and put the relevant information up on the States' websites. The FHWA assumes that these duties would require the most State employee time in the first year, and substantially less time in subsequent years. While FHWA does not have a formal role in the registration process, FHWA would likely incur costs associated with monitoring States' compliance with the requirements.

Consistent with Section 607 of the MOBILE NOW Act, FHWA is proposing in § 645.307(a)(3) to require the State DOT, in consultation with appropriate State agencies, to establish a process for electronically notifying broadband infrastructure entities identified under proposed § 645.307(a)(2), on an annual basis, of the State transportation improvement program and providing other notifications as necessary. To comply with this provision, FHWA assumes that States will create an electronic notification process, update their utility accommodation policies to include this new process, and also notify broadband companies of these changes. The costs to States would primarily be upfront, and there would be smaller annual costs to send the notifications in subsequent years.

Finally, FHWA proposes in § 645.307(a)(4) to require that the State DOT, in consultation with appropriate State agencies, coordinate initiatives under Section 607 of the MOBILE NOW Act with other statewide telecommunication and broadband plans and State and local transportation and land use plans, including strategies to minimize repeated excavations that involve broadband infrastructure installation in a ROW. The FHWA assumes this proposed provision will be handled by a statewide coordinator. The cost that States would incur to implement this proposed provision may vary considerably due to differing processes across States. The FHWA assumed that the duties associated with this provision would require 25 percent of the time of a management-level employee on an annual basis. The FHWA does not anticipate any costs to accrue to the Agency as a result of this proposed provision, as FHWA would not be directly involved in these coordination efforts.

Proposed § 645.307(b) contains the MOBILE NOW Act provision that, if a State chooses to provide for the installation of broadband infrastructure in the ROW of an applicable Federal-aid highway project, the State DOT must ensure that any existing broadband infrastructure entities are not disadvantaged, as compared to other broadband infrastructure entities, with respect to the Section 607 program. The FHWA assumes that this provision will not result in any time burdens or costs to FHWA, State DOTs, or broadband infrastructure entities.

Consistent with the MOBILE NOW Act, proposed § 645.309 provides that nothing in Part 645, Subpart C, requires that a State install or allow the installation of broadband infrastructure in a highway ROW, and that nothing in part 645, subpart C, authorizes the Secretary to withhold or reserve funds or approval of a Title 23 project. The FHWA again assumes that this provision will not result in any time burdens or costs to FHWA, State DOTs, or broadband infrastructure entities.

The FHWA requests comments on the proposed rule. The FHWA also requests comments and information regarding the assumptions used and other aspects of the economic analysis of the proposed rule to inform the economic analysis at the final rule stage. The FHWA presents the economic analysis in a supporting statement and a spreadsheet found in the rulemaking docket (FHWA–2019–0037) and summarizes the analysis under the ''Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), and DOT Regulatory Policies and Procedures'' heading of this preamble.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA has determined that the proposed rule will not be a significant regulatory action within the meaning of Executive Order (E.O.) 12866 or DOT regulatory policies and procedures.[2] This action complies with E.O. 12866, 13563, and 13771 to improve regulation. The FHWA anticipates that the proposed rule would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. The proposed rule also does not raise any novel legal or policy issues.

The following paragraphs summarize the economic analysis for this proposed rule. A supporting statement and a spreadsheet in the rulemaking docket (FHWA–2019–0037) contain additional details. The FHWA requests data and information that could inform the economic analysis for this rule, including any estimates of resulting benefits, at the final rule stage.

The FHWA estimated the costs of the proposed rule at $24.5 million for the 10-year period from 2020 through 2029, or $3.5 million on an annual basis, measured in 2018 dollars and using a 7 percent discount rate. If a 3 percent discount rate is used, these costs are estimated at $29.6 million for the same 10-year period, or $3.5 million on an annual basis, again measured in 2018 dollars.

Table 1 summarizes the economic impacts of the proposed rule that were able to be quantified at this stage of the regulatory process. The quantifiable impacts are the costs that the proposed rule would impose on States and also on FHWA. The costs of the proposed rule are primarily borne by States, with less than 1 percent of the total costs accruing to FHWA and the remaining more than 99 percent of costs accruing to States. Based on the estimated economic impacts and the other criteria for a significant regulatory action under Section 3(f) of E.O. 12866 and as supplemented by E.O. 13563, this proposed rule is not a significant regulatory action.

[2] *See* 49 CFR part 5.

TABLE 1—ESTIMATED COSTS OF THE BROADBAND INFRASTRUCTURE DEPLOYMENT PROPOSED RULE (2018$)

Calendar year	Analysis period year	Costs
2020	1	$4,185,039
2021	2	3,380,660
2022	3	3,380,660
2023	4	3,380,660
2024	5	3,380,660
2025	6	3,380,660
2026	7	3,380,660
2027	8	3,380,660
2028	9	3,380,660
2029	10	3,380,660
Total Undiscounted Costs to FHWA		75,502
Total Undiscounted Costs to State DOTs		34,535,477
Undiscounted Total Costs		34,610,980
Total Costs with 3% Discounting		29,618,666
Total Costs with 7% Discounting		24,496,098
Average Annual Costs (Undiscounted)		3,461,098
Annualized Costs, 3% Discount Rate, 10 Years		3,472,211
Annualized Costs, 7% Discount Rate, 10 Years		3,487,693

The FHWA anticipates that the proposed rule would result in benefits that would accrue primarily to broadband companies and to residents in areas adjacent to project sites. Several of the proposed provisions will result in increased coordination and cooperation between broadband companies and State DOTs. This increased coordination would have the effect of increasing the ability of broadband companies to conduct project work at times when roads are already closed or under construction for other purposes. Coordination of construction activities between State DOTs and broadband companies is likely to increase the efficiency of projects, and also result in fewer disruptions for area residents if road closures are coordinated rather than occurring at separate times for the purposes of State DOTs and broadband infrastructure. The FHWA, however, lacks the data and information necessary to quantify these potential benefits at this stage in the regulatory process. The FHWA requests data and information from commenters that could inform the economic analysis for this rule, including any estimates of resulting benefits or cost savings, or that could facilitate a quantification of costs, benefits, or cost savings at the final rule stage.

Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs)

This proposed rule is not an E.O. 13771 regulatory action because it is not significant under E.O. 12866.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this proposed rule on small entities and has determined that the action is not anticipated to have a significant economic impact on a substantial number of small entities. The proposed rule affects States, and States are not included in the definition of small entity set forth in 5 U.S.C. 601. The proposed rule would also affect broadband entities, but the impact on these entities is expected to be beneficial and also to involve potential cost savings. The proposed rule is thus not expected to result in increased costs for broadband entities. Therefore, FHWA certifies that the action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48). This proposed rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $155 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal governments and the private sector. In addition, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. Finally, this proposed rule only implements requirements specifically set forth in statute.

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in E.O. 13132, and FHWA has determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments.'' The proposed rule implements statutory requirements that apply to States that receive Title 23 Federal-aid highway funds, and it would not have substantial direct effects on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal laws. Accordingly, the funding

and consultation requirements of E.O. 13175 do not apply and a Tribal summary impact statement is not required.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposed rule does not contain collection of information requirements for the purposes of the PRA.

National Environmental Policy Act

The Agency has analyzed this proposed rulemaking action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded under 23 CFR 771.117(c)(1), which applies to activities that do not involve or lead directly to construction. Categorically excluded actions meet the criteria for categorical exclusions under the Council on Environmental Quality regulations (40 CFR 1508.4) and under 23 CFR 771.117(a) and normally do not require any further NEPA approvals by FHWA. This rulemaking proposes to include in FHWA regulations the coordination, registration, and notification requirements of 47 U.S.C. 1504 that are applicable to States that receive Title 23 Federal-aid highway funds. This rulemaking does not involve and will not lead directly to construction. The FHWA does not anticipate any environmental impacts, and there are no unusual circumstances present under 23 CFR 771.117(b).

Regulation Identification Number

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 645

Grant Programs-transportation, Highways and roads, Reporting and recordkeeping requirements, Utilities.

Issued under authority delegated in 49 CFR 1.81 and 1.85.

Nicole R. Nason,

Administrator, Federal Highway Administration.

In consideration of the foregoing, FHWA proposes to amend Part 645 of Title 23 of the CFR as set forth below:

■ 1. Revise the authority citation for part 645 to read as follows:

Authority: 23 U.S.C. 101, 109, 111, 116, 123, and 315; 47 U.S.C. 1504; 23 CFR 1.23 and 1.27; 49 CFR 1.48(b); and E.O. 11990, 42 FR 26961 (May 24, 1977).

■ 2. Add subpart C to read as follows:

Subpart C—BROADBAND INFRASTRUCTURE DEPLOYMENT

Sec.
645.301 Purpose.
645.303 Applicability.
645.305 Definitions.
645.307 General requirements.
645.309 Limitations.

§ 645.301 Purpose.

To prescribe additional requirements to facilitate the installation of broadband infrastructure pursuant to 47 U.S.C. 1504.

§ 645.303 Applicability.

This subpart applies to each State that receives funds under Chapter 1 of Title 23 of the U.S.C. and only to activities for which Federal obligations or expenditures are initially approved on or after the effective date of this subpart.

§ 645.305 Definitions.

For purposes of this subpart, the terms defined in 47 U.S.C. 1504(a) shall have the same meaning where used in these regulations, notwithstanding other provisions of this part or Title 23 of the U.S.C.

§ 645.307 General requirements.

(a) A State department of transportation, in consultation with appropriate State agencies, shall:

(1) Identify a broadband utility coordinator, whether in the State department of transportation or in another State agency, that is responsible for facilitating the broadband infrastructure right-of-way efforts within the State. The broadband utility coordinator may have additional responsibilities.

(2) Establish a process for the registration of broadband infrastructure entities that seek to be included in those broadband infrastructure right-of-way facilitation efforts within the State.

(3) Establish a process to notify electronically broadband infrastructure entities identified under subsection (2) of the State transportation improvement program on an annual basis and provide additional notifications as necessary to achieve the goals of this subpart; and

(4) Coordinate initiatives carried out under this subpart with other statewide telecommunication and broadband plans and State and local transportation and land use plans, including strategies to minimize repeated excavations that involve the installation of broadband infrastructure in a right-of-way.

(b) If a State chooses to provide for the installation of broadband infrastructure in the right-of-way of an applicable Federal-aid highway project under this section, the State department of transportation shall carry out any appropriate measures to ensure that any existing broadband infrastructure entities are not disadvantaged, as compared to other broadband infrastructure entities, with respect to the program under this section.

§ 645.309 Limitations.

Nothing in this subpart establishes a mandate or requirement that a State install or allow the installation of broadband infrastructure in a highway right-of-way. Nothing in this subpart authorizes the Secretary to withhold or reserve funds or approval of a project under Title 23 of the U.S.C.

[FR Doc. 2020–17525 Filed 8–12–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 72

[Docket No. OAG 157; AG Order No. 4759–2020]

RIN 1105–AB52

Registration Requirements Under the Sex Offender Registration and Notification Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice is proposing a rule that specifies the registration requirements under the Sex Offender Registration and Notification Act (''SORNA''). The rule in part reflects express requirements of SORNA and in part reflects the exercise of authorities SORNA grants to the Attorney General to interpret and implement SORNA's requirements. SORNA's requirements have previously been delineated in guidelines issued by the Attorney General for implementation of SORNA's requirements by registration jurisdictions.

DATES: Written and electronic comments must be sent or submitted on or before October 13, 2020. Comments received by mail will be considered timely if they are postmarked on or before the last day of the comment period. The electronic Federal Docket Management System will accept electronic comments until midnight Eastern Time at the end of that day.

ADDRESSES: Comments may be mailed to Regulations Docket Clerk, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Room 4234, Washington, DC 20530. To ensure proper handling, please reference Docket No. OAG 157 on your correspondence. You may submit comments electronically or view an electronic version of this proposed rule at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: David J. Karp, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Washington, DC, 202–514–3273.

SUPPLEMENTARY INFORMATION: Posting of Public Comments. Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you still want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Overview

The Sex Offender Registration and Notification Act (''SORNA''), which is title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109–248, 34 U.S.C. 20901 *et seq.,* establishes national standards for sex offender registration and notification in the United States. SORNA has a dual character, imposing registration obligations on sex offenders as a matter of Federal law that are federally enforceable under circumstances supporting Federal jurisdiction, *see* 18 U.S.C. 2250, and providing minimum national standards that non-Federal jurisdictions are expected to incorporate in their sex offender registration and notification programs, subject to a reduction of Federal funding for those that fail to do so, *see* 34 U.S.C. 20912(a), 20926–27.

The Justice Department's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (''SMART Office'') administers the national standards for sex offender registration and notification under SORNA and assists all jurisdictions in implementing the SORNA standards in their programs. *See id.* 20945. As provided by SORNA, the Department of Justice also (i) prosecutes SORNA violations by sex offenders committed under circumstances supporting Federal jurisdiction, *see* 18 U.S.C. 2250; (ii) assists in the enforcement of sex offender registration requirements through the activities of the U.S. Marshals Service, *see* 34 U.S.C. 20941; (iii) operates, through the Federal Bureau of Investigation, the National Sex Offender Registry, which compiles the information obtained through the sex offender registration programs of the states and other registration jurisdictions and makes it available on a nationwide basis for law enforcement purposes, *see id.* 20921; and (iv) operates the Dru Sjodin National Sex Offender Public website, *www.nsopw.gov,* which provides public access through a single national site to the information about sex offenders posted on the public sex offender websites of the various registration jurisdictions, *see id.* 20922.

SORNA generally directs the Attorney General to ''issue guidelines and regulations to interpret and implement [SORNA].'' *Id.* 20912(b). SORNA also authorizes the Attorney General to take more specific actions in certain contexts.

One such provision is 34 U.S.C. 20913. That section states in subsection (b) that sex offenders are generally to register initially before release from imprisonment, or within three business days of sentencing if not sentenced to imprisonment, but it provides further in subsection (d) that the Attorney General has ''the authority to specify the applicability of the requirements of [SORNA] to sex offenders convicted before the enactment of [SORNA] or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b).'' As discussed below in connection with 28 CFR 72.3, section 20913(d) is not a constitutionally impermissible delegation of legislative authority. Rather, it enables the Attorney General to effectuate the legislative intent that SORNA apply to all sex offenders, regardless of when they were convicted.

Another relevant provision lists several types of information that sex offenders must provide for inclusion in sex offender registries, and states that sex offenders must also provide ''[a]ny other information required by the Attorney General.'' *Id.* 20914(a)(8). This provision as well is not an impermissible delegation of legislative authority, but rather is instrumental to the Attorney General's effectuating the legislative objective to ''protect the public from sex offenders and offenders against children'' by ''establish[ing] a comprehensive national system for the registration of those offenders.'' *Id.* 20901; *see* 73 FR at 38054–57; 76 FR at 1637. The Attorney General's exercise of the authority under section 20914(a)(8) is limited to requiring additional information that furthers the legislative public safety objective or the implementation or enforcement of SORNA's provisions. How that has been done is explained below in connection with proposed 28 CFR 72.6 and 72.7.

The Attorney General has exercised these authorities in previous rulemakings and issuances of guidelines under SORNA, as detailed in the rulemaking history and section-by-section analysis below, and the interpretations and policy decisions in this proposed rule follow those already adopted in existing SORNA-related documents. The present rule provides a concise and comprehensive statement of what sex offenders must do to comply with SORNA's requirements.

In addition to SORNA's original provisions, described above, this rulemaking draws on and implements provisions of the International Megan's Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders (''International Megan's Law''), Public Law 114–119. Section 6 of International Megan's Law amended SORNA by (i) redesignating, in 34 U.S.C. 20914(a), former paragraph (7) as paragraph (8) and adding a new paragraph (7) that requires a sex offender to provide for inclusion in the sex offender registry information relating to intended travel outside the United States, including several specified types of information ''and any other itinerary or other travel-related information required by the Attorney General''; (ii) adding a new subsection (c) to 34 U.S.C. 20914 that requires sex offenders to provide and update registration information required by SORNA ''in conformity with any time and manner requirements prescribed by the Attorney General''; and (iii) adding a new subsection (b) to SORNA's criminal provision, 18 U.S.C. 2250, that specifically reaches international travel reporting violations.

This rulemaking is not innovative in terms of policy. Many of the requirements it articulates reflect express SORNA requirements. These include, inter alia, statutory specifications about (i) where and when sex offenders must register; (ii) several categories of required registration information; (iii) how long sex offenders must continue to register, including different registration periods for sex offenders in different tiers and lifetime registration for those in the highest tier; and (iv) a requirement to appear periodically to verify the registration information. *See* 34 U.S.C. 20911(2)–(4), 20913, 20914(a)(1)–(7), 20915, 20918.

Other features of the rule reflect exercises of the Attorney General's powers to implement SORNA's requirements. These include additional specifications regarding information sex offenders must provide, how and when they must report certain changes in registration information, and the time and manner for complying with SORNA's registration requirements by sex offenders who cannot comply with SORNA's normal registration procedures. On these matters, however, the proposed rule embodies the same policies as those appearing in the previously issued SORNA guidelines and prior rulemakings under SORNA.

The rule also makes no change in what registration jurisdictions need to do to substantially implement SORNA in their registration programs, a matter that will continue to be governed by the previously issued guidelines for SORNA implementation. While this rule does not make new policy, as discussed above, it is expected to have a number of benefits. The rule will facilitate enforcement of SORNA's registration requirements through prosecution of non-compliant sex offenders under 18 U.S.C. 2250. By providing a comprehensive articulation of SORNA's registration requirements in regulations addressed to sex offenders, it will provide a more secure basis for prosecution of sex offenders who engage in knowing violations of any of SORNA's requirements. It will also resolve a number of specific concerns that have arisen in past litigation or could be expected to arise in future litigation, if not clarified and resolved by this rule. For example, as discussed below, the amendment of § 72.3 in the rule will ensure that its application of SORNA's requirements to sex offenders with pre-SORNA convictions is given effect consistently, resolving an issue resulting from the decision in *United States* v. *DeJarnette,* 741 F.3d 971 (9th Cir. 2013).

Beyond the benefits to effective enforcement of SORNA's requirements, the rule will benefit sex offenders by providing a clear and comprehensive statement of their registration obligations under SORNA. This statement will make it easier for sex offenders to determine what they are required to do and thus facilitate compliance.

By facilitating the enforcement of, and compliance with, SORNA's registration requirements, the rule will further SORNA's public safety objectives. *See* 34 U.S.C. 20901. More consistent adherence to these requirements will enable registration and law enforcement authorities to better track and monitor released sex offenders in the community and enhance the basis for public notification regarding registered sex offenders that SORNA requires. *See id.* 20920, 20923.

Effective September 1, 2017, the provisions of SORNA, formerly appearing at 42 U.S.C. 16901 *et seq.,* were recodified in a new title 34 of the United States Code, and now appear at 34 U.S.C. 20901 *et seq. See http://uscode.house.gov/editorialreclassification/t34/index.html.* United States Code citations of SORNA provisions in this proposed rule accordingly differ from the corresponding citations in earlier sources and documents.

Rulemaking History

This proposed rule is the ninth document the Attorney General has published pursuant to the statutory directive to the Attorney General to issue guidelines and regulations to interpret and implement SORNA. *See* 34 U.S.C. 20912(b). The previous SORNA-related documents are as follows:

(1) Interim rule entitled, ''Applicability of the Sex Offender Registration and Notification Act,'' published at 72 FR 8894 (Feb. 28, 2007). The interim rule solicited public comments, and the comment period ended on April 30, 2007. The interim rule added a new part 72 to title 28 of the Code of Federal Regulations, entitled ''Sex Offender Registration and Notification.'' The interim rule provided that ''[t]he requirements of the Sex Offender Registration and Notification Act apply to all sex offenders, including sex offenders convicted of the offense for which registration is required prior to the enactment of that Act.'' 28 CFR 72.3.

(2) Proposed guidelines, published at 72 FR 30210 (May 30, 2007), whose general purpose was to provide guidance and assistance to registration jurisdictions in implementing the SORNA standards in their sex offender registration and notification programs. The proposed guidelines solicited public comment, and the comment period ended on August 1, 2007.

(3) Final guidelines for registration jurisdictions regarding SORNA implementation entitled, ''The National Guidelines for Sex Offender Registration and Notification'' (the ''SORNA Guidelines''), published at 73 FR 38030 (July 2, 2008).

(4) Proposed supplemental guidelines for SORNA implementation, published at 75 FR 27362 (May 14, 2010), whose general purpose was to address certain issues arising in SORNA implementation that required that some aspects of the SORNA Guidelines be augmented or modified. The proposed supplemental guidelines solicited public comment, and the comment period closed on July 13, 2010.

(5) Final rule entitled, ''Applicability of the Sex Offender Registration and Notification Act,'' published at 75 FR 81849 (Dec. 29, 2010). This rule finalized the February 28, 2007, interim rule providing for SORNA's applicability to all sex offenders, including those with pre-SORNA convictions.

(6) Final supplemental guidelines for SORNA implementation entitled, ''Supplemental Guidelines for Sex

Offender Registration and Notification'' (the ''SORNA Supplemental Guidelines''), published at 76 FR 1630 (Jan. 11, 2011).

(7) Proposed supplemental guidelines, published at 81 FR 21397 (Apr. 11, 2016), whose general purpose was to afford registration jurisdictions greater flexibility in their efforts to substantially implement SORNA's juvenile registration requirement. These proposed supplemental guidelines solicited public comment, and the comment period closed on June 10, 2016.

(8) Final supplemental guidelines regarding substantial implementation of SORNA's juvenile registration requirement entitled, ''Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act,'' published at 81 FR 50552 (Aug. 1, 2016).

Section-by-Section Analysis

The present proposed rule expands part 72 of title 28 of the Code of Federal Regulations to provide a full statement of the registration requirements for sex offenders under SORNA. It revises the statement of purpose and definitional sections in 28 CFR 72.1 and 72.2. It maintains the existing provision in 28 CFR 72.3 stating that SORNA's requirements apply to all sex offenders, regardless of when they were convicted, and incorporates additional language in § 72.3 to reinforce that point. It also adds to part 72 provisions—§§ 72.4 through 72.8—articulating where sex offenders must register, how long they must register, what information they must provide, how they must register and keep their registrations current to satisfy SORNA's requirements, and the liability they face for violations, following SORNA's express requirements and the prior articulation of standards for these matters in the SORNA Guidelines and the SORNA Supplemental Guidelines.

Section 72.1—Purpose

Section 72.1(a) states part 72's purpose to specify SORNA's registration requirements and their scope of application. It further notes that the Attorney General has the authority pursuant to provisions of SORNA to specify these requirements and their applicability as provided in part 72.

Section 72.1(b) states that part 72 does not preempt or limit any obligations of or requirements relating to sex offenders under other laws, rules, or policies. It further notes that states and other governmental entities may prescribe requirements, with which sex offenders must comply, that are more extensive or stringent than those prescribed by SORNA. This reflects the fact that SORNA provides minimum national standards for sex offender registration. It is intended to establish a floor rather than a ceiling for the registration programs of states and other jurisdictions, which can prescribe registration requirements binding on sex offenders under their own laws independent of SORNA. Jurisdictions accordingly are free to adopt more stringent or extensive registration requirements for sex offenders than those set forth in this part, including more stringent or extensive requirements regarding where, when, and how long sex offenders must register, what information they must provide, and what they must do to keep their registrations current. *See* 73 FR at 38032–35, 38046.

Section 72.2—Definitions

Section 72.2 states that terms used in part 72 have the same meaning as in SORNA. Hence, for example, references in the part to registration ''jurisdictions'' mean the 50 states, the District of Columbia, the five principal U.S. territories, and Indian tribes qualifying under 34 U.S.C. 20929. *See id.* 20911(10); 73 FR at 38045, 38048. Likewise, where the part uses such terms as sex offender (and tiers thereof), sex offense, convicted or conviction, sex offender registry, student, employee or employment, and reside or residence, the meaning is the same as in SORNA. *See* 34 U.S.C. 20911(1)–(9), (11)–(13); 73 FR at 38050–57, 38061–62.

Section 72.3—Applicability of the Sex Offender Registration and Notification Act

Section 72.3 carries forward in substance current 28 CFR 72.3, which states that SORNA's requirements apply to all sex offenders, including those whose sex offense convictions predate SORNA's enactment. This section was initially adopted on February 28, 2007, and amended on December 29, 2010. The section and its rationale are explained further in the interim and final rulemakings that adopted it. *See* 72 FR 8894; 75 FR 81849.

Section 72.3, and its modification by this rulemaking, are constitutionally sound. In *Smith* v. *Doe,* 538 U.S. 84 (2003), the Supreme Court upheld the retroactive application of sex offender registration requirements against an ex post facto challenge, in reviewing a state registration system whose major features paralleled SORNA's in many ways. The commonalities between SORNA and the state registration program upheld in *Smith* include required registration before release from imprisonment; provision of name, address, employment, vehicle, and other registration information; continued registration and periodic verification of registration information for at least 15 years; lifetime registration and quarterly verification for certain registrants convicted of aggravated or multiple sex offenses; and public internet posting of information about registrants. *See id.* at 90–91. The Federal courts have consistently rejected ex post facto challenges to SORNA itself. *See, e.g., United States* v. *Felts,* 674 F.3d 599, 605–06 (6th Cir. 2012).

Section 72.3 also is not premised on any constitutionally impermissible delegation of legislative authority to the executive branch of government. Congress intended that SORNA apply to all sex offenders, regardless of when they were convicted. *See Reynolds* v. *United States,* 565 U.S. 432, 442–45 (2012); *id.* at 448–49 & n. (Scalia, J., dissenting) (agreeing that Congress intended for SORNA to apply to all sex offenders). Congress authorized the Attorney General to specify the applicability of SORNA's requirements to sex offenders with pre-SORNA and pre-SORNA-implementation convictions, *see* 34 U.S.C. 20913(d), in order to effectuate that intent while enabling the Attorney General to address transitional issues presented in integrating the existing sex offender population into SORNA's comprehensive nationwide registration system. *See Reynolds,* 565 U.S. at 440–42; 72 FR at 8895–97; 73 FR at 38035–36, 38046, 38063–64; 75 FR at 81850–52. In adopting § 72.3, the Attorney General implemented the relevant legislative policy—that SORNA's requirements should apply to all sex offenders—to the maximum, having found no reason to delay or qualify its implementation. Consequently, as an articulation of a legislative policy embodied in SORNA, the issuance of § 72.3 pursuant to 34 U.S.C. 20913(d) involved no exercise of legislative authority and did not contravene the non-delegation doctrine. *See Gundy* v. *United States,* 139 S. Ct. 2116, 2123–30 (2019) (plurality opinion); *id.* at 2130–31 (Alito, J., concurring in the judgment); *id.,* Brief for the United States at 22–38.

Moreover, regardless of any question concerning the validity of 34 U.S.C. 20913(d), § 72.3 is adequately supported on the basis of the Attorney General's authority to issue guidelines and regulations to interpret and implement SORNA, appearing in 34 U.S.C. 20912(b). In § 72.3, the Attorney General interpreted SORNA as intended by

Congress to apply to all sex offenders regardless of when they were convicted—an interpretation endorsed by the Supreme Court, *see Reynolds,* 565 U.S. at 440–45; *see also Gundy,* 139 S. Ct. at 2123–31—and he implemented that legislative policy by embodying it in a clearly stated rule.

The same considerations apply to the amended version of § 72.3 proposed here, which effectuates more reliably the legislative policy judgment that SORNA's requirements should apply to all sex offenders by restating the current rule with additional specificity, but which involves no change in substance. In comparison with the current formulation of § 72.3, this proposed rule adds a second sentence stating that (i) all sex offenders must comply with all requirements of SORNA, regardless of when they were convicted; (ii) this is so regardless of whether a registration jurisdiction has substantially implemented SORNA or any particular SORNA requirement; and (iii) this is so regardless of whether a particular requirement or class of sex offenders is mentioned in examples in the rules or guidelines issued by the Attorney General.

The first part of the added sentence reiterates § 72.3's specification of SORNA's applicability to all sex offenders in the form of an affirmative direction to sex offenders, and it states explicitly that all of SORNA's requirements so apply.

The added sentence further states that the registration duties SORNA prescribes for sex offenders are not conditional on registration jurisdictions' having adopted SORNA's requirements in their own registration laws or policies. For example, SORNA requires sex offenders to register in the states (and other registration jurisdictions) in which they reside, work, or attend school. *See* 34 U.S.C. 20913(a). All of the states have sex offender registration programs, which were initially established long before the enactment of SORNA. Hence, sex offenders are able to register in these existing state programs. The fact that a particular state has not modified its registration program at this time to incorporate the full range of SORNA requirements does not prevent a sex offender required to register by SORNA from registering in the state or excuse a failure to do so. *See, e.g., Felts,* 674 F.3d at 603–05.

The same principle applies in situations in which a jurisdiction's law does not track or incorporate a particular SORNA requirement affecting a sex offender. Consider a situation of this nature in which SORNA requires a sex offender to register but the law of the state in which he resides does not. This may occur, for example, because state law does not require registration based on the particular sex offense for which the offender was convicted, or because state law requires registration by sex offenders for shorter periods of time than SORNA, or because state law does not apply its registration requirements ''retroactively'' as broadly as § 72.3 applies SORNA's requirements to sex offenders with pre-SORNA convictions. Notwithstanding the absence of a parallel state law, the registration authorities in the state may be willing to register the sex offender because Federal law (*i.e.,* SORNA) requires him to register. *Cf. Doe* v. *Keathley,* 290 SW3d 719 (Mo. 2009) (state constitutional prohibition of retrospective laws does not preclude registration based on SORNA). If the state registration authorities are willing to register the sex offender, he is not relieved of the duty to register merely because state law does not track the Federal law registration requirement.

Hence, sex offenders can be held liable for violating any requirement stated in this rule, regardless of when they were convicted, and regardless of whether the jurisdiction in which the violation occurs has adopted the requirement in its own law. This does not mean, however, that SORNA unfairly holds sex offenders liable for failing to comply with its requirements, where the requirement is unknown to the sex offender or impossible for him to carry out. *Cf. Felts,* 674 F.3d at 605 (noting concern). Federal enforcement of SORNA's requirements occurs primarily through SORNA's criminal provision, 18 U.S.C. 2250. That provision makes it a Federal crime for a person required to register by SORNA to knowingly fail to register or update a registration as required by SORNA under circumstances supporting Federal jurisdiction, such as conviction of a Federal sex offense or interstate or foreign travel. As discussed below, section 2250 holds sex offenders liable only for violations of known registration obligations, and it excuses failures to comply with SORNA under certain conditions if the non-compliance results from circumstances beyond the sex offenders' control.

Consider first the concern that sex offenders may lack notice regarding registration obligations. Under the procedures prescribed by SORNA, and under standard procedures that have generally been adopted by registration jurisdictions whether or not they have implemented SORNA's requirements, the registration of sex offenders normally involves (i) informing sex offenders of their registration duties, (ii) obtaining from sex offenders signed acknowledgments confirming receipt of that information, and (iii) having sex offenders provide the required registration information. *See* 34 U.S.C. 20919(a); 73 FR at 38062–63.

Registration procedures of this nature inform sex offenders of what they must do, and the acknowledgments obtained from them provide evidence that they were so informed. *See* 76 FR at 1638. If a jurisdiction that registers a sex offender has not fully revised its processes for conformity to SORNA, then it may not tell the sex offender about some of the registration requirements imposed by SORNA, such as those that the jurisdiction has not incorporated in its own laws. If the jurisdiction fails to inform a sex offender about some of SORNA's registration requirements, the sex offender then does not know about some of his registration obligations under SORNA based on the information received from the jurisdiction, and may not learn of them from other sources. In such cases, the possibility of liability under 18 U.S.C. 2250 continues to be limited to cases in which a sex offender ''knowingly fails to register or update a registration as required by [SORNA].'' The limitation to ''knowing[ ]'' violations provides a safeguard against liability based on unwitting violations of SORNA requirements of which a sex offender was not aware. Section 72.8(a)(1)(iii) of this rule, and the accompanying discussion below, provide further explanation about the limitation of liability under 18 U.S.C. 2250 to cases involving violation of known registration obligations.

The second concern about fairness involves situations in which a sex offender has failed to do something SORNA requires because it is impossible for him to do so. For example, as noted above, a jurisdiction with laws that do not require registration based on the particular offense for which a sex offender was convicted may nevertheless be willing to register him in light of his Federal law (SORNA) registration obligation. But alternatively, the jurisdiction's law or practice may constrain its registration personnel to register only sex offenders whom its own laws require to register. In such a case, it is impossible for the sex offender to register in that jurisdiction, though subject to a registration duty under SORNA. This is so because registration is by its nature a two-party transaction, involving a sex offender's providing information about where he resides and other matters as required, and acceptance of that

information by the jurisdiction for inclusion in the sex offender registry. If the jurisdiction is unwilling to carry out its side of the transaction, then the sex offender cannot register.

Concerns of this nature are also addressed in SORNA's criminal provision, 18 U.S.C. 2250. Subsection (c) of section 2250 provides an affirmative defense to liability for SORNA violations if ''(1) uncontrollable circumstances prevented the individual from complying; (2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and (3) the individual complied as soon as such circumstances ceased to exist.'' A registration jurisdiction's law or practice that precludes registration of a sex offender, as described above, is a circumstance that the sex offender cannot control and to which he did not contribute, so he cannot be held liable for failure to register with that jurisdiction as SORNA requires.

The defense in section 2250(c) comes with the proviso that the defendant must comply with SORNA ''as soon as [the preventing] circumstances cease[ ] to exist.'' For example, consider the case posed above of a jurisdiction that refuses to register sex offenders based on a particular offense for which SORNA requires registration, so that a sex offender residing in the jurisdiction who was convicted of that offense cannot register there. Suppose that the jurisdiction later progresses in its implementation of SORNA and becomes willing to register offenders who have been convicted for that sex offense. In light of the proviso, the sex offender's obligation to register revives once the jurisdiction becomes willing to register him. That is fair, because the circumstance preventing his compliance with the SORNA registration requirement no longer exists.

Section 72.8(a)(2) of this rule, and the accompanying discussion below, provide further explanation about the contours of the impossibility defense under 18 U.S.C. 2250(c).

Returning to the text of proposed § 72.3, the added sentence states at the end that sex offenders must comply with SORNA's requirements ''regardless of whether any particular requirement or class of sex offenders is mentioned in examples in this regulation or in other regulations or guidelines issued by the Attorney General.'' In conjunction with the earlier statement in the provision that all sex offenders must comply with all SORNA requirements, the added language responds to a judicial decision that did not give full effect to the current regulation.

Section 72.3, as currently formulated, states that SORNA's ''requirements . . . apply to all sex offenders,'' exercising the Attorney General's ''authority to specify the applicability of the requirements of [SORNA] to sex offenders convicted before the enactment of [SORNA] or its implementation in a particular jurisdiction.'' 34 U.S.C. 20913(d); *see Reynolds,* 565 U.S. at 441–45 (explaining Congress's decision to give the Attorney General authority to apply SORNA's requirements to sex offenders with pre-SORNA convictions). Nevertheless, in *United States* v. *DeJarnette,* 741 F.3d 971 (9th Cir. 2013), the court believed that the Attorney General had not made all of SORNA's requirements applicable to all sex offenders. The case concerned the applicability of SORNA's requirement that a sex offender register initially in the jurisdiction in which he is convicted, if it differs from his residence jurisdiction, *see* 34 U.S.C. 20913(a) (second sentence), where the sex offender's conviction predated SORNA's enactment. Notwithstanding 28 CFR 72.3, the court concluded that the Attorney General had not made this SORNA requirement applicable to sex offenders with pre-SORNA convictions, if they were already subject to state law registration requirements. *DeJarnette,* 741 F.3d at 982. The decision was largely premised on the fact that the particular SORNA requirement at issue was not mentioned in relation to that particular class of sex offenders in the examples of sex offenders subject to SORNA's requirements in 28 CFR 72.3 and the SORNA Guidelines. *DeJarnette,* 741 F.3d at 976–80.

The sentence added to § 72.3 by this rulemaking will foreclose future decisions of this nature and ensure that § 72.3's application of SORNA's requirements to all sex offenders is given effect consistently.

The proposed rule includes one further change in § 72.3, affecting the first example in the provision. The example as currently formulated describes a sex offender convicted in 1990 and released following imprisonment in 2007, and says that the sex offender is subject to SORNA's requirements. In *Reynolds,* the Supreme Court held that SORNA's requirements did not apply to sex offenders with pre-SORNA convictions prior to the Attorney General's exercise of the authority under 34 U.S.C. 20913(d) to specify SORNA's applicability to those offenders. 565 U.S. at 434–35. It follows that SORNA's requirements did not apply to such sex offenders before the Attorney General's original issuance of 28 CFR 72.3 on February 28, 2007. Example 1 in § 72.3 might be misunderstood as suggesting the contrary, *i.e.,* that a sex offender with a pre-SORNA conviction released from imprisonment at any time in 2007 was immediately subject to SORNA's requirements. Hence, to avoid any possible inconsistency or apparent inconsistency with the Supreme Court's decision in *Reynolds,* the rule proposes to change the example by substituting a later year for 2007.

Section 72.4—Where sex offenders must register

Section 72.4 tracks SORNA's express requirement that a sex offender must register and keep the registration current in each jurisdiction in which the sex offender resides, is an employee, or is a student, and must also initially register in the jurisdiction in which the offender was convicted if that jurisdiction differs from the jurisdiction of residence. *See* 34 U.S.C. 20913(a); 73 FR at 38061–62.

Section 72.5—How long sex offenders must register

Section 72.5 sets out SORNA's requirements regarding the duration of registration. SORNA classifies sex offenders into three ''tiers,'' based on the nature and seriousness of their sex offenses and their histories of recidivism. *See* 34 U.S.C. 20911(2)–(4); 73 FR at 38052–54. The tier in which a sex offender falls affects how long the offender must continue to register under SORNA. The required registration periods are generally 15 years for a tier I sex offender, 25 years for a tier II sex offender, and life for a tier III sex offender. *See* 34 U.S.C. 20915(a); 73 FR at 38068. Paragraph (a) in § 72.5 reproduces these requirements.

Paragraph (a) of § 72.5 provides an exception ''when the sex offender is in custody or civilly committed,'' incorporating in substance an express proviso appearing in SORNA, 34 U.S.C. 20915(a). The exception and proviso mean that SORNA does not require a sex offender to carry out its processes for registering or updating registrations during subsequent periods of confinement, *e.g.,* when imprisoned because of conviction for some other offense following his release from imprisonment for the sex offense. This reflects that ''the SORNA procedures for keeping up the registration . . . generally presuppose the case of a sex offender who is free in the community'' and that ''[w]here a sex offender is confined, the public is protected against the risk of his reoffending in a more direct way, and more certain means are available for tracking his whereabouts.''

73 FR at 38068. However, registration jurisdictions may see incremental value in requiring sex offenders to carry out their processes for registering and updating registrations during subsequent confinement and are free to do so, though SORNA does not require it.

The proviso relating to custody or civil commitment does not pertain to or limit SORNA's requirement that initial registration is to occur while the sex offender is still imprisoned following conviction for the predicate sex offense. *See* 34 U.S.C. 20913(b)(1), 20919(a). Rather, as indicated above, it affects a sex offender's registration obligations under SORNA if he is later reincarcerated after his release. The proviso relating to custody or civil commitment also does not mean that the running of the SORNA registration period is suspended during such subsequent confinement, and does not otherwise affect the commencement or duration of a sex offender's registration period under SORNA.

For example, consider a sex offender, released in 2010 from imprisonment for a sex offense conviction, whom SORNA requires to register for 25 years as a tier II sex offender, and suppose the sex offender is subsequently convicted during the registration period for committing a robbery and imprisoned for three years for the latter offense. SORNA's registration requirement for that sex offender terminates in 2035, although he was incarcerated for three years of the 25-year SORNA registration period. Sex offenders should keep in mind, however, that their registration jurisdictions are free to impose more extensive requirements than SORNA, including longer registration periods. Hence, the basic registration period under the law of a jurisdiction in which such a sex offender is registered may be longer than 25 years. And even if the basic registration period under the jurisdiction's law is the same as the 25 years required by SORNA, the jurisdiction may choose not to credit the three years the sex offender spent in prison for the robbery towards the running of the registration period under state law. *See* 73 FR at 38032–35, 38046, 38068. Expiration of the SORNA registration period accordingly does not obviate the need for sex offenders to check with registration jurisdictions whether they remain subject to registration requirements under the jurisdictions' laws.

As provided in paragraph (b) of § 72.5, the registration period under SORNA begins to run upon release from imprisonment following a sex offense conviction, or at the time of sentencing for a sex offense where imprisonment does not ensue. *See* 73 FR at 38068. The sex offender's release from imprisonment, which marks the start of the registration period for an incarcerated sex offender, may occur later than the end of the sentence imposed for the sex offense itself. For example, suppose that a sex offender is convicted for a fatal sexual assault upon a victim, resulting in a sentence of three years of imprisonment for the sexual assault and a concurrent or consecutive sentence of 25 years of imprisonment for murder. Or consider a case in which a sex offender is sentenced to three years of imprisonment for a sexual assault and at a later time he is sentenced to 25 years of imprisonment for an unrelated murder, while still imprisoned for the sex offense. Or suppose that a sex offender is already serving a 25-year prison term for an unrelated murder, when he is sentenced to three years of imprisonment for a sexual assault. In all such cases, the registration period under SORNA starts to run when the sex offender actually completes his imprisonment and is released. It does not start to run while the sex offender is still imprisoned but has completed the portion of the sentence attributable to the sex offense.

This conclusion follows from the general design and specific requirements of SORNA's registration procedures. SORNA provides that incarcerated sex offenders must initially register ''before completing a sentence of imprisonment with respect to the [registration] offense.'' 34 U.S.C. 20913(b)(1). SORNA further states that the correlative responsibilities of registration officials in effecting the initial registration are to be carried out ''shortly before release of the sex offender from custody.'' *Id.* 20919(a); *see* 73 FR at 38063 (explaining requirement to register shortly before release from custody). Thereafter, sex offenders must ''keep the registration[s] current'' for specified periods of time, depending on their ''tier[s].'' 34 U.S.C. 20915(a). In light of these provisions, the registration period is logically understood as being framed at the start by the release from custody and at the end by the termination of the specified time period.

Considering specifically cases in which a sex offender is serving an aggregate prison term for multiple crimes, 34 U.S.C. 20913(b)(1) requires registration ''before completing a sentence of imprisonment *with respect to* the offense giving rise to the registration requirement.'' (Emphasis added). It does not require registration ''before completing a sentence of imprisonment *for* the offense giving rise to the registration requirement.'' The broader ''with respect to'' language is best understood to mean that the relevant prison term under section 20913(b)(1) is not the specific sentence imposed for the predicate sex offense alone, but rather is the full related sentence of imprisonment, including any prison time imposed for other crimes. The corresponding language in section 20919(a) supports this understanding, requiring initial registration of the sex offender ''shortly before release of the sex offender from custody.'' This language does not signify that initial registration is to occur when the sex offender is about to complete the portion of an aggregate sentence attributable specifically to the sex offense, though the sex offender will remain in custody because he is serving additional time for another offense or offenses. Rather, by its terms, section 20919(a) contemplates that initial registration will occur shortly before the sex offender is actually released, and section 20913(b)(1) must be understood in the same way, because section 20913(b)(1) and section 20919(a) describe the same transaction (initial registration) from different perspectives.

For example, consider the case of a sex offender convicted and sentenced for a fatal sexual assault, resulting in a three-year prison term for the sexual assault and a concurrent or consecutive 25-year sentence for murder. Suppose that the sexual assault involved was a sexual contact offense against an adult victim, resulting in the classification of the sex offender as a tier I sex offender and a registration period of 15 years. *See* 34 U.S.C. 20911(2)–(4), 20915(a)(1). If the registration period started to run at the end of the first three years of the sex offender's incarceration, then the 15-year registration period would expire long before the sex offender's release, because of the extension of his imprisonment by the murder sentence. This result would be at odds with section 20919(a)'s direction that sex offenders are to be initially registered ''shortly before release . . . from custody,'' because the sex offender's registration obligation under SORNA would be a thing of the past by that time, and also with the requirements under sections 20913 and 20915(a)(1) that the sex offender register and keep the registration current for 15 years, because his registration period would be over before he registered in the first place.

In addition to the inconsistency with the statutory provisions discussed above, starting the running of the registration period upon the conclusion

of the portion of a sentence attributable to the registration offense would result in arbitrary differences in registration requirements, depending on fortuities in the structuring of criminal sentences or their descriptions in judgments. For example, considering again the case of a fatal sexual assault, suppose that the resulting sentence involves a three-year prison term for the sexual assault, followed by a consecutive 25-year prison term for murder. As discussed above, the assumed 15-year registration period for the sexual assault would then run out long before the sex offender's release, and he would never have to register at all. But suppose the sentence is cast instead as a 25-year prison term for murder, followed by a consecutive three-year prison term for the sexual assault. The completion of the prison term for the sexual assault would then coincide with the sex offender's release from prison, and he would have to register and keep the registration current for 15 years. Because the ordering of the sexual assault and murder sentences has no relevance to the public safety purposes served by sex offender registration, the discrepancy between the two cases as to resulting registration requirements would be irrational. For this reason as well, the registration period under SORNA starts to run when the sex offender is actually released, and not at an earlier time upon completion of the portion of an aggregate sentence specifically attributable to the predicate sex offense.

By way of comparison, an offender's term of post-imprisonment supervised release for a sex offense does not start to run until he is released from prison, including in cases in which the offender's release is delayed by his serving additional prison time for another offense or offenses. This is not unfair or illogical; it rationally reflects the nature of supervision as a measure designed for overseeing and managing offenders following their release. While sex offender registration differs from supervision in being a non-punitive, civil regulatory measure, *see, e.g., Smith,* 538 U.S. at 92–106; *Felts,* 674 F.3d at 605–06, it is likewise concerned with the post-release treatment of sex offenders in the community. Hence, as with periods of supervision, it is rational for an offender's registration period for a sex offense to begin to run when he is released from prison, including in cases in which the offender's release is delayed by his serving additional prison time for other criminal conduct. This reflects the nature of registration as a measure designed for tracking and monitoring sex offenders following their release.

The principle that the registration period under SORNA commences on release also applies to cases in which the sex offender is not imprisoned for the sex offense per se but is imprisoned because of conviction for another offense. For example, suppose that a sex offender is convicted of sexually assaulting and robbing a victim, resulting in a sentence of probation for the sexual assault and a sentence of five years of imprisonment for the robbery. Considering the relevant statutory provisions, section 20913(b)(2) makes applicable an alternative time for initial registration—three business days after sentencing—only ''if the sex offender is not sentenced to a term of imprisonment.'' Correspondingly, section 20919(a) provides for initial registration immediately after sentencing, rather than shortly before release from custody, only ''if the sex offender is not in custody.'' These provisions, by their terms, do not apply to a sex offender who remains in custody, though on the basis of an offense other than the predicate sex offense. Hence, cases of this nature must fall under the requirement of sections 20913(b)(1) and 20919(a) to effect initial registration shortly before the sex offender's release, and the consequences are the same as in the cases discussed above involving aggregate prison terms for the registration offense and other crimes. Where the sex offender receives a non-incarcerative sentence for the registration offense and a prison term for another offense, the registration period starts upon the sex offender's release, so that once registered and out in the community he must keep the registration current for the full registration period specified in 34 U.S.C. 20915, and not just for a truncated period reduced by his incarceration for another offense.

In terms of underlying policy, registration is by definition concerned with tracking sex offenders in the community following their release. *See* 73 FR at 38044–45. The tiers and the associated registration periods under SORNA reflect categorical legislative judgments as to how long sex offenders should be tracked following release for public safety purposes. These judgments do not come into play until the sex offender is released. When that happens may be affected by many factors—such as the length of the prison term the sex offender receives for the sex offense; whether the sex offender makes parole (in a state system having parole) or gets good-conduct credit; whether the jurisdiction adopts an early release program because of prison crowding; and whether the sex offender gets additional prison time because of sentencing for other offenses, related or unrelated to the sex offense.

Whatever the reasons may be, it is logical to start a post-release tracking regime—*i.e.,* registration—when the sex offender is actually released. Initial registration is to occur ''shortly before'' that, as 34 U.S.C. 20919(a) requires, ''in light of the underlying objectives of ensuring that sex offenders have their registration obligations in mind when they are released, and avoiding situations in which registration information changes significantly between the time the initial registration procedures are carried out and the time the offender is released.'' 73 FR at 38063.

Hence, the registration period under SORNA starts to run when a sex offender is released from imprisonment, and not at an earlier time when the specific sentence for the registration offense has been served, if the two times differ. This follows from the features of the statutory provisions discussed above, from the absurdities entailed by a different interpretation, and from the basic character of registration as a post-release tracking measure. To the extent that there might be any uncertainty or argument to the contrary, the Attorney General in this rule exercises his authority under 34 U.S.C. 20912(b) to interpret and implement SORNA's provisions affecting the duration of registration in the manner stated.

Paragraph (c) in § 72.5 sets out SORNA's reduction of its registration period for certain sex offenders who maintain a ''clean record'' in accordance with statutory standards. The specific ''clean record'' conditions are that the sex offender not be convicted of any felony or any sex offense, successfully complete any period of supervision, and successfully complete an appropriate sex offender treatment program (certified by a registration jurisdiction or the Attorney General). The SORNA registration period is reduced by five years for a tier I sex offender who maintains a clean record for 10 years, and reduced to the period for which the clean record is maintained for a tier III sex offender required to register on the basis of a juvenile delinquency adjudication who maintains a clean record for 25 years. *See* 34 U.S.C. 20915(a), (b); 73 FR at 38068–69.

Section 72.6—Information Sex Offenders Must Provide

Section 72.6 sets out the registration information sex offenders must provide. Much of the specified information is

expressly required by SORNA, *see* 34 U.S.C. 20914(a)(1)–(7), and the remainder reflects SORNA's direction that sex offenders must provide ''[a]ny other information required by the Attorney General,'' *id.* 20914(a)(8).

In general terms, the required information comprises (i) name, birth date, and Social Security number; (ii) remote communication identifiers (including email addresses and telephone numbers); (iii) information about places of residence, non-residential lodging, employment, and school attendance; (iv) international travel; (v) passports and immigration documents; (vi) vehicle information; and (vii) professional licenses. By providing basic information about who a sex offender is, where he is, how he gets around, and what he is authorized to do, these requirements implement SORNA and further its public safety objectives.

Paragraph (a)(1) of § 72.6 requires that a sex offender provide his name, including any alias, which is an express SORNA requirement. S*ee* 34 U.S.C. 20914(a)(1); 73 FR at 38055.

Paragraph (a)(2) of § 72.6 requires a sex offender to provide date of birth information, a requirement the Attorney General has adopted in the SORNA Guidelines and this rule because date of birth information is regularly utilized as part of an individual's basic identification information and hence is of value in helping to identify, track, and locate registered sex offenders. The paragraph requires that any date that the sex offender uses as his or her purported date of birth must be provided, in addition to the actual date of birth, because sex offenders may, for example, provide false date of birth information in seeking employment that would provide access to children or other potential victims. *See* 73 FR at 38057.

Paragraph (a)(3) of § 72.6 requires that a sex offender provide his Social Security number, which is an express SORNA requirement. *See* 34 U.S.C. 20914(a)(2). The paragraph further requires provision of any number that a sex offender uses as his purported Social Security number. The Attorney General has adopted the latter requirement—already appearing in the SORNA Guidelines in 2008—because sex offenders may, for example, attempt to use false Social Security numbers in seeking employment that would provide access to children or other potential victims. *See* 73 FR at 38055.

Paragraph (b) of § 72.6 requires a sex offender to provide all remote communication identifiers that he uses in internet or telephonic communications or postings, including email addresses and telephone numbers. A provision of the Keeping the internet Devoid of Sexual Predators Act of 2008 (KIDS Act), Public Law 110–400, directed the Attorney General to use the authority under paragraph (7) of 34 U.S.C. 20914(a) [now designated paragraph (8)] to require sex offenders to provide internet identifiers. The Attorney General has previously exercised that authority to require the specified information in the SORNA Guidelines. *See* 34 U.S.C. 20916(a); 73 FR at 38055; 76 FR at 1637. The Attorney General has exercised the same authority to require telephone numbers—a requirement also already appearing in the SORNA Guidelines—for a number of reasons, including facilitating communication between registration personnel and sex offenders, and addressing the potential use of telephonic communication by sex offenders in efforts to contact or lure potential victims. *See* 73 FR at 38055.

Paragraph (c)(1) of § 72.6 requires a sex offender to provide residence address information or other residence location information if the sex offender lacks a residence address. Providing residence address information is an express SORNA requirement. *See* 34 U.S.C. 20914(a)(3). In the SORNA Guidelines, and now in this rule, the Attorney General has adopted the requirement to provide other residence location information for sex offenders who do not have residence addresses, such as homeless sex offenders or sex offenders living in rural areas that lack street addresses, because having this type of location information serves the same public safety purposes as knowing the whereabouts of sex offenders with definite residence addresses. *See* 73 FR at 38055–56, 38061–62.

Paragraph (c)(2) of § 72.6 requires a sex offender to provide information about temporary lodging while away from his residence for seven or more days. In the SORNA Guidelines, and now in this rule, the Attorney General has adopted this requirement because sex offenders may reoffend at locations away from the places in which they have a permanent or long-term presence, and indeed could be encouraged to do so to the extent that information about their places of residence is available to the authorities but information is lacking concerning their temporary lodgings elsewhere. The benefits of having this information include facilitating the successful investigation of crimes committed by sex offenders while away from their normal places of residence and discouraging sex offenders from committing crimes in such circumstances. *See* 73 FR at 38056.

Paragraph (c)(3) of § 72.6 requires a sex offender to provide employer name and address information, or other employment location information if the sex offender lacks a fixed place of employment. Providing employer name and address information is an express SORNA requirement. *See* 34 U.S.C. 20914(a)(4). The Attorney General has adopted, in the SORNA Guidelines and this rule, the requirement to provide other employment location information for sex offenders who work but do not have fixed places of employment—*e.g.,* a long-haul trucker whose ''workplace'' is roads and highways throughout the country, a self-employed handyman who works out of his home and does repair or home improvement work at other people's homes, or a person who frequents sites that contractors visit to obtain day labor and works for any contractor who hires him on a given day. The Attorney General has adopted this requirement because knowing where such sex offenders are in the course of employment serves the same public safety purposes as knowing the whereabouts of sex offenders who work at fixed locations. *See* 73 FR at 38056, 38062.

Paragraph (c)(4) of § 72.6 requires a sex offender to provide the name and address of any place where the sex offender is or will be a student, an express SORNA requirement. *See* 34 U.S.C. 20914(a)(5); 73 FR at 38056–57, 38062.

Paragraph (d) of § 72.6 requires a sex offender to provide information about intended travel outside of the United States. This is an express SORNA requirement, added by International Megan's Law. *See* 34 U.S.C. 20914(a)(7); Public Law 114–119, sec. 6(a)(1). A related provision in § 72.7(f) of this rule requires sex offenders to report international travel information at least 21 days in advance. Exercising the general authority under paragraph (8) of 34 U.S.C. 20914(a) [then designated paragraph (7)] to expand the required range of registration information, the Attorney General initially adopted these requirements in the SORNA Supplemental Guidelines, *see* 76 FR at 1637–38, even before the enactment of International Megan's Law, for a number of reasons:

(i) Realizing SORNA's public safety objectives requires that registered sex offenders be effectively tracked as they leave and return to the United States, and that other sex offenders who enter the United States be identified, so that domestic registration and law enforcement authorities know about the

sex offenders' presence in the United States and can ensure that they register while here as SORNA requires. To that end, SORNA directs the Attorney General to establish and maintain a system for informing relevant registration jurisdictions about persons entering the United States whom SORNA requires to register. *See* 34 U.S.C. 20930. Sections 72.6(d) and 72.7(f) of this rule are part of that system, requiring registered sex offenders to inform their registration jurisdictions about travel abroad, including information that encompasses both their departure from and return to the United States. Beyond this direct benefit, learning about sex offenders' entry into the United States may depend on notice from the authorities of the countries they come from—authorities who may expect reciprocal notice about sex offenders traveling to their countries from the United States. Having U.S. sex offenders inform their registration jurisdictions of travel abroad provides information that is used by U.S. authorities, including the U.S. Marshals Service and INTERPOL Washington-U.S. National Central Bureau, to notify the authorities in the destination countries about sex offenders traveling to their areas. These foreign authorities may in return advise U.S. authorities about sex offenders traveling to the United States from their countries, facilitating the notification of domestic registration jurisdictions about the sex offenders' presence that section 20930 contemplates. *See* 73 FR at 38066; 76 FR at 1637.

(ii) Sex offenders traveling abroad may remain subject in some respects to U.S. jurisdiction, *e.g.,* because a sex offender intends to go to an overseas U.S. military base or to work as or for a U.S. military contractor in another country. In such cases, the intended travel of the sex offender may implicate the same public safety concerns in relation to communities abroad for which the United States has responsibility as it does in relation to communities within the United States. *See* 73 FR at 38067; 76 FR at 1637–38.

(iii) More broadly, for a sex offender disposed to reoffend, it may be attractive to travel to foreign countries where law enforcement is weaker (or perceived to be weaker), where sexually trafficked children or other vulnerable victims may be more readily available, and where the registration and notification measures to which the sex offender is subject in the United States are inoperative. The United States does not wish to export the public safety threat posed by its sex offenders to other countries. Requiring sex offenders in the United States to inform their registration jurisdictions about international travel provides a basis for notifying foreign authorities in the destination countries, which helps to reduce the resulting risks. If these sex offenders do reoffend in other countries, the resulting human harm to victims is no less because it occurs in a foreign country, and the United States' image and foreign relations interests may be adversely affected as well. Sex offenders from the United States who commit sex offenses in other countries may be subject to prosecution under various Federal laws, which reflect the United States' policy of, and commitment to, combating the commission of crimes of sexual abuse and exploitation internationally as well as domestically. *See, e.g.,* 18 U.S.C. 1591, 2251(c), 2260, 2423. Consistent tracking of international travel by sex offenders helps to deter and prevent such crimes, and to facilitate their investigation if they occur.

Beyond creating a general requirement to report travel outside of the United States at least 21 days in advance, the SORNA Supplemental Guidelines authorized the requirement of more definite information about international travel plans. 76 FR at 1638 (additional directions may be issued by the SMART Office ''concerning the information to be required in sex offenders' reports of intended international travel, such as information concerning expected itinerary, departure and return dates, and means and purpose of travel''); *see Information Required for Notice of International Travel, http://ojp.gov/smart/international_travel.htm* (providing such directions). Section 72.6(d) in this rule specifically directs sex offenders traveling abroad to report information regarding any anticipated itinerary, dates and places of departure, arrival, or return, carrier and flight numbers for air travel, destination countries and address or contact information therein, and means and purpose of travel. More detailed information of this type is needed because notice only that a sex offender intends to travel somewhere outside of the United States at some time three weeks or more in the future would be inadequate to realize the objectives of international tracking of sex offenders—objectives that include, as discussed above, notification as appropriate of U.S. and foreign authorities in destination countries for public safety purposes, preventing and detecting the offenders' commission of sex offenses in other countries, and reliably tracking sex offenders as they leave and enter the United States for purposes of enforcing registration requirements. Requiring the specified information concerning international travel is justified by its value in furthering these objectives. *See* 73 FR at 38066–67; 76 FR at 1634, 1637–38.

Congress endorsed these objectives and the stated conclusion in International Megan's Law, whose purposes include ''[t]o protect children and others from sexual abuse and exploitation, including sex trafficking and sex tourism, by providing advance notice of intended travel by registered sex offenders outside the United States to the government of the country of destination [and] requesting foreign governments to notify the United States when a known sex offender is seeking to enter the United States.'' Public Law 114–119; *see* 162 Cong. Rec. H390–94 (Feb. 1, 2016) (explanation in House floor debate on passage). As noted above, the measures adopted by International Megan's Law in support of its international notification system include an express requirement that sex offenders report intended international travel, making this requirement a permanent feature of SORNA that exists independently of regulatory action. *See* 34 U.S.C. 20914(a)(7); Public Law 114–119, sec. 6(a)(1).

Section 72.6(d) in this rule follows the new SORNA travel information provision added by International Megan's Law, which states that sex offenders must provide ''[i]nformation relating to intended travel of the sex offender outside the United States, including any anticipated dates and places of departure, arrival, or return, carrier and flight numbers for air travel, destination country and address or other contact information therein, means and purpose of travel, and any other itinerary or other travel-related information required by the Attorney General.'' 34 U.S.C. 20914(a)(7). A sex offender must report all anticipated information in these categories in relation to both the United States and destination countries as the language of § 72.6(d) makes clear. For example, a sex offender who is leaving the United States must report any anticipated date and place of departure from the United States, and also any anticipated date and place of return to the United States if the sex offender expects to return. Likewise, with respect to each foreign country to be visited, the sex offender must report any anticipated date and place of arrival in that country and any anticipated date and place of departure from that country.

Paragraph (e) of § 72.6 requires a sex offender to provide information concerning any passport or passports he

has, and concerning documents establishing his immigration status if he is an alien. The passports referenced in the paragraph include passports of all types and nationalities, not just U.S. passports. Where the sex offender has multiple passports, as may occur, for example, in cases involving dual citizenship, the paragraph's reference to ''each passport'' the sex offender has means that the sex offender must report all of his passports. The Attorney General has included information about passports and immigration documents as required registration information in the SORNA Guidelines and in this rule because having this type of information in the registries serves various purposes. These include locating and apprehending registrants who may attempt to leave the United States after committing new sex offenses or registration violations, facilitating the tracking and identification of registrants who leave the United States but later reenter while still required to register, *see* 34 U.S.C. 20930, and crosschecking the accuracy and completeness of other types of information that registrants are required to provide—*e.g.,* if immigration documents show that an alien registrant is in the United States on a student visa but the registrant fails to provide school attendance information as required by 34 U.S.C. 20914(a)(5). *See* 73 FR at 38056.

Paragraph (f) of § 72.6 requires a sex offender to provide information concerning any vehicle owned or operated by the sex offender, information concerning the license plate number or other registration number or identifier for the vehicle, and information as to where the vehicle is habitually kept. In part, the paragraph reflects the express SORNA requirement in 34 U.S.C. 20914(a)(6) that a sex offender provide ''[t]he license plate number and a description of any vehicle owned or operated by the sex offender.'' This includes, in addition to vehicles registered to the sex offender, any vehicle that the sex offender regularly drives, either for personal use or in the course of employment. *See* 73 FR at 38057. The remainder of the paragraph reflects the Attorney General's requirement (previously adopted in the SORNA Guidelines) of additional vehicle-related information that serves similar purposes or may be useful to help prevent flight, facilitate investigation, or effect an apprehension if the sex offender commits new offenses or violates registration requirements. *See id.*

Paragraph (g) of § 72.6 requires a sex offender to provide information concerning all licensing of the offender that authorizes him to engage in an occupation or carry out a trade or business. The Attorney General has adopted this requirement, initially in the SORNA Guidelines and now in this rule, because information of this type (i) may be helpful in locating a registered sex offender if he absconds, (ii) may provide a basis for notifying the responsible licensing authority if the offender's conviction of a sex offense may affect his eligibility for the license, and (iii) may be useful in crosschecking the accuracy and completeness of other information the offender is required to provide—*e.g.,* if the sex offender is licensed to engage in a certain occupation but does not provide name or place of employment information as required by 34 U.S.C. 20914(a)(4) for such an occupation. *See* 73 FR at 38056.

Section 72.7—How Sex Offenders Must Register and Keep the Registration Current

SORNA requires sex offenders to register and keep the registrations current in jurisdictions in which they reside, work, or attend school. Section 72.7 sets out the procedures for doing so, addressing the timing requirements for registering and updating registrations, the jurisdictions to which changes in registration information must be reported, and the means for reporting such changes. In general terms, the section requires (i) initial registration before release from imprisonment, or within three business days after sentencing if the sex offender is not imprisoned; (ii) periodic in-person appearances to verify and update the registration information; (iii) reporting of changes in name, residence, employment, or school attendance; (iv) reporting of intended departure or termination of residence, employment, or school attendance in a jurisdiction; (v) reporting of changes relating to remote communication identifiers, temporary lodging information, and vehicle information; (vi) reporting of international travel; and (vii) compliance with a jurisdiction's rules if a sex offender has not complied with the normal time and manner specifications for carrying out a SORNA requirement.

The requirements articulated in this section in part appear expressly in SORNA and in part reflect exercises of the powers SORNA confers on the Attorney General to further specify its requirements. The authorities relied on include the following: SORNA directs the Attorney General to issue rules and guidelines to ''interpret and implement'' its provisions, which include the basic requirement that each sex offender must ''register . . . and keep the registration current.'' 34 U.S.C. 20912(b), 20913(a). Previously in the SORNA Guidelines, *see* 73 FR at 38062–67, and now in this rule, the Attorney General interprets his authority to ''interpret and implement'' SORNA as including the authority to articulate a comprehensive, gap-free set of procedural requirements for registering and updating registrations. Authority of this nature is needed to implement SORNA in conformity with the legislative objective of protecting the public from sex offenders by establishing a comprehensive national system for their registration. 34 U.S.C. 20901. Beyond the public safety need, this understanding of section 20912(b) ''takes Congress to have filled potential lacunae'' in SORNA in a manner consistent with fair notice concerns, empowering the Attorney General to eliminate any ''vagueness and uncertainty'' regarding how sex offenders are to comply with SORNA's registration requirements. *Reynolds,* 565 U.S. at 441–42.

The Attorney General's authority to interpret and implement SORNA includes in particular the authority to adopt additional specifications regarding the time and manner in which its requirements must be carried out. For example, SORNA expressly requires that sex offenders must appear in person to report changes of name, residence, employment, and student status within three business days of such changes. 34 U.S.C. 20913(c). But SORNA does not expressly require the reporting within a particular timeframe of changes relating to other types of registration information that also bear directly and importantly on the identification, tracking, and location of sex offenders. These include remote communication identifiers (such as email addresses), temporary lodging information, international travel information, and vehicle information, as described in § 72.6(b), (c)(2), (d), and (f) of this rule. Absent a requirement that changes in these types of information be reported promptly, the information in the registries about these matters could become seriously out of date, which would in turn impair SORNA's basic objective of effectively tracking and locating sex offenders in the community following their release. *See* 73 FR at 38044–45, 38066–67. The Attorney General accordingly has adopted definite timing requirements for reporting changes in these types of information, previously in the guidelines for SORNA implementation, and now in § 72.7(e)–(f) in this rule.

Adopting such rules reflects an exercise of the Attorney General's authority to ''interpret and implement''

SORNA, 34 U.S.C. 20912(b), and more specifically to interpret and implement SORNA's requirement that sex offenders must ''keep the registration current,'' *id.* 20913(a). While the heading of subsection (c) of section 20913 is ''[k]eeping the registration current,'' the heading only signifies that the subsection sets out an updating rule for the most basic types of registration information. It does not signify that nothing more can be required to keep the registration current. The contrary is evident from section 20915(a), which specifies the duration of required registration under SORNA. Section 20915(a) uses the same terminology, stating that a sex offender ''shall keep the registration current'' for the relevant period of time. Obviously, in providing that a sex offender must ''keep the registration current'' for a specified period, section 20915(a) defines the period of time during which a sex offender must continue to comply with all of SORNA's requirements, given the absence of any other provision in SORNA specifying how long sex offenders must comply with its various requirements. Among other consequences, this means that sex offenders must appear in person periodically to verify and update their registration information, as required by section 20918, for the specified period of time—not just that they must report changes in name, residence, employment, and school attendance, as provided in section 20913(c), for the specified period of time. That consideration alone demonstrates that section 20913(c) does not exhaust SORNA's requirements for ''keep[ing] the registration current.''

Regarding other matters, such as changes in registration information relating to remote communication identifiers, temporary lodging, vehicles, and international travel, the Attorney General has understood the authority to interpret and implement SORNA's requirement to keep the registration current as including the authority to adopt specific time and manner requirements for the reporting of such changes. Congress ratified this understanding in the KIDS Act. In that Act, Congress provided that (i) ''[t]he Attorney General, using the authority provided in [34 U.S.C. 20914(a)(8)], shall require that each sex offender provide to the sex offender registry those internet identifiers the sex offender uses or will use'' and (ii) ''[t]he Attorney General, using the authority provided in [34 U.S.C. 20912(b)], shall specify the time and manner for keeping current information required to be provided under this section.'' 34 U.S.C. 20916(a)–(b).

Notably, Congress did not find it necessary to make new grants of authority to the Attorney General for these purposes and instead directed the Attorney General to utilize the pre-existing authorities under SORNA to require internet identifier information and specify the time and manner for keeping it current. This confirms that the section 20912(b) authority includes the authority to adopt additional time and manner requirements in the rules and guidelines the Attorney General issues.

SORNA directs sex offenders to provide for inclusion in the sex offender registry several expressly described types of registration information and, in addition, ''[a]ny other information required by the Attorney General.'' *Id.* 20914(a)(8). The section 20914(a)(8) authority underlies the specification of required types of registration information in § 72.6 in this rule beyond those expressly set forth in section 20914(a)(1)–(7). The section 20914(a)(8) authority also provides an additional, independent legal basis for various requirements in § 72.7, including a number of timing rules it incorporates.

In relation to some types of required registration information under this rule, which may be based wholly or in part on the exercise of the Attorney General's authority under section 20914(a)(8), a timing requirement is inherent in the nature of the information that must be reported. This is true of the requirement under § 72.7(d) to report if a sex offender will be commencing residence, employment, or school attendance elsewhere or will be terminating residence, employment, or school attendance in a jurisdiction. It is likewise true of the requirement under § 72.7(f) to report intended international travel. Because these provisions constitute requirements to report present intentions regarding expected future actions, the information they require necessarily must be reported in advance of the expected actions.

Section 20914(a)(8) also provides an additional, independent legal basis for more specific timeframe requirements appearing in § 72.7 of this rule. One of these requirements is that intended international travel is to be reported at least 21 days in advance of the travel, as provided in § 72.7(f). In substance, this is a requirement that a sex offender report to the residence jurisdiction an intention to travel outside of the United States at some time 21 days or more in the future. Viewing the expected timing of the travel as an aspect of the required information, it is within the Attorney General's authority under 34 U.S.C. 20914(a)(8) to require sex offenders to provide ''[a]ny other information''—and following the adoption of section 20914(a)(7) by International Megan's Law, within the Attorney General's more specific authority under the latter provision to require ''any other . . . travel-related information.'' Essentially the same point applies to the rule's specification that sex offenders must report within three business days changes relating to certain types of registration information the Attorney General has required. Section 72.7(e) directs reporting of changes in information within that timeframe relating to remote communication identifiers, temporary lodging, and vehicles. Viewed as requirements to report the information that certain actions or occurrences have taken place within the preceding three business days, these requirements are within the Attorney General's authority under 34 U.S.C. 20914(a)(8).

Turning to another SORNA provision supporting time and manner requirements, 34 U.S.C. 20913(d) authorizes the Attorney General to specify the applicability of SORNA's requirements to sex offenders convicted before the enactment of SORNA or its implementation in a particular jurisdiction ''and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b).'' The cross-referenced ''subsection (b)'' is the SORNA provision that requires sex offenders to register initially before release from imprisonment, or within three business days of sentencing if the sex offender is not imprisoned. As discussed below in connection with § 72.7(a)(2) of this rule, sex offenders released from Federal or military custody and sex offenders convicted in foreign countries generally are unable to register prior to release. The section 20913(d) authority to prescribe registration rules for sex offenders ''unable to comply with subsection (b)'' accordingly provides one of the legal bases for the alternative timing rules in § 72.7(a)(2), which direct registration by sex offenders in the affected classes within three business days of entering a jurisdiction following release.

The authorities described above—under 34 U.S.C. 20912(b), 20913(d), and 20914(a)(8)—provided the basis for the Attorney General's adoption of time and manner specifications for complying with SORNA's registration requirements in previously issued guidelines under SORNA. More recently, International Megan's Law added an express, general

grant of authority to the Attorney General to make such specifications. The relevant provision is 34 U.S.C. 20914(c), which reads as follows: ''(c) TIME AND MANNER.—A sex offender shall provide and update information required under subsection (a), including information relating to intended travel outside the United States required under paragraph (7) of that subsection, in conformity with any time and manner requirements prescribed by the Attorney General.''

The cross-referenced ''subsection (a)'' is SORNA's list of all the registration information that sex offenders must provide. Hence, the new section 20914(c) requires sex offenders to comply with the Attorney General's directions regarding the time and manner for providing and updating all registration information required by SORNA. In addition to empowering the Attorney General to specify the time and manner for reporting particular types of registration information, this provision enables the Attorney General to specify the time and manner for registration. This is so because registration on the part of a sex offender consists of providing required registration information to the registration jurisdiction for inclusion in the sex offender registry. Given that the Attorney General has the authority under section 20914(c) to specify the time and manner for a sex offender's provision of each required type of registration information, it follows that the Attorney General has the authority under section 20914(c) to specify the time and manner for a sex offender's provision of the required types of information collectively, which constitutes registration under SORNA.

Paragraph (a)—Initial Registration

Paragraph (a)(1) of § 72.7 tracks SORNA's general rule that a sex offender must initially register—that is, register for the first time based on a sex offense conviction—before release from imprisonment, or within three business days of sentencing in case of a non-incarcerative sentence. *See* 34 U.S.C. 20913(b) (initial registration by sex offenders); *id.* 20919(a) (complementary duties of registration officials); 73 FR at 38062–65 (related explanation in guidelines).

Paragraph (a)(2)(i) of § 72.7 addresses the situation of sex offenders who are released from Federal or military custody or sentenced for a Federal or military sex offense. There is no separate Federal registration program for such offenders. Hence, Federal authorities cannot register these offenders prior to their release from custody or near the time of sentencing. This is in contrast to the authorities of the SORNA registration jurisdictions—the states, the District of Columbia, the five principal U.S. territories, and qualifying Indian tribes—who may register their sex offenders prior to release or near sentencing as provided in 34 U.S.C. 20913(b), 20919(a). SORNA instead enacted special provisions under which Federal correctional and supervision authorities (i) are required to inform Federal (including military) offenders with sex offense convictions that they must register as required by SORNA and (ii) must notify the (non-Federal) jurisdictions in which the sex offenders will reside following release or sentencing so that these jurisdictions can integrate the sex offenders into their registration programs. *See* 18 U.S.C. 4042(c); Public Law 105–119, sec. 115(a)(8)(C), as amended by Public Law. 109–248, sec. 141(i) (10 U.S.C. 951 note); 73 FR at 38064; *see also* 18 U.S.C. 3563(a)(8); *id.* 3583(d) (third sentence); *id.* 4209(a) (second sentence) (mandatory Federal supervision condition to comply with SORNA); 34 U.S.C 20931 (requiring the Secretary of Defense to provide to the Attorney General military sex offender information for inclusion in the National Sex Offender Registry and National Sex Offender Public website).

The timing rule adopted for such situations is that sex offenders released from Federal or military custody or convicted of Federal or military sex offenses but not sentenced to imprisonment must register within three business days of entering or remaining in a jurisdiction to reside, *see* 73 FR at 38064, which parallels SORNA's normal timeframe for registering or updating a registration following changes of residence, *see* 34 U.S.C. 20913(c). Section 72.7(a)(2)(i) refers to a sex offender entering ''or remaining'' in a jurisdiction to reside because, for example, a Federal sex offender released from a Federal prison located in a state may remain in that state to reside, rather than relocating to some other state. In such a case, the three-business-day period for registering with the state runs from the time of the sex offender's release.

In terms of legal authority, the requirement of § 72.7(a)(2)(i) is supported by the Attorney General's authority to interpret and implement SORNA's requirement to register in the jurisdiction of residence, 34 U.S.C. 20912(b), 20913(a); the Attorney General's authority under section 20913(d) to prescribe rules for the registration of sex offenders who are unable to comply with section 20913(b)'s timing rule for initial registration; and the Attorney General's authority under section 20914(c) to adopt time and manner specifications for providing and updating registration information, which includes the authority to adopt time and manner specifications for registration as discussed above. Viewing a sex offender's being released from Federal or military custody and taking up residence in a jurisdiction as a change of residence, this requirement is also supportable as a direct application of section 20913(c).

Paragraph (a)(2)(ii) of § 72.7 addresses the situation of persons required to register on the basis of foreign sex offense convictions. Registration by the convicting state is not an available option under SORNA in such cases because foreign states are not registration jurisdictions under SORNA. *See* 34 U.S.C. 20911(10). Also, there may be no domestic jurisdiction in which SORNA requires such offenders to register—if they are not residing, working, or attending school in the United States at the time they are released from custody or sentenced in the foreign country—but SORNA's requirements will apply if they travel or return to the United States. The rule adopted for foreign conviction situations is that the sex offender must register within three business days of entering a domestic jurisdiction to reside, work, or attend school, *see* 73 FR at 38050–51, 38064–65, which parallels SORNA's normal timeframe for registering or updating a registration following changes of residence, employment, or student status, *see* 34 U.S.C. 20913(c).

In terms of legal authority, this requirement is supported by the Attorney General's authority to interpret and implement SORNA's requirement to register in jurisdictions of residence, employment, and school attendance, 34 U.S.C. 20912(b), 20913(a); the Attorney General's authority under section 20913(d) to prescribe rules for the registration of sex offenders who are unable to comply with section 20913(b)'s timing rule for initial registration; and the Attorney General's authority under section 20914(c) to adopt time and manner specifications for providing and updating registration information, which includes the authority to adopt time and manner specifications for registration as discussed above. Insofar as a sex offender's travel or return to the United States following a foreign conviction involves a change of residence, employment, or student status, this

requirement is also supportable as a direct application of section 20913(c).

Paragraph (b)—Periodic In-Person Verification

Paragraph (b) of § 72.7 sets out the express requirement of 34 U.S.C. 20918 that sex offenders periodically appear in person in the jurisdictions in which they are required to register, allow the jurisdictions to take current photographs, and verify their registration information, with the frequency of the required appearances determined by their tiering. *See* 73 FR at 38067–68.

The second sentence of paragraph (b), exercising the Attorney General's authority under 34 U.S.C. 20912(b), interprets and implements section 20918's requirement of verifying the information in each registry to include correcting any information that is out of date or inaccurate and reporting any new registration information. With respect to most types of registration information, other provisions of § 72.7 require reporting of changes within shorter timeframes than the intervals between periodic in-person appearances for verification. Hence, a sex offender who has complied with SORNA's requirements is likely to have reported changes in most types of registration information prior to his next verification appearance. But § 72.7 does not specially address the time and manner for reporting changes in some types of registration information. *See* § 72.6(a)(2)–(3), (e), (g) (requiring as well information concerning actual and purported dates of birth and Social Security numbers, passports and immigration documents, and professional licenses). Sex offenders can keep their registrations current with respect to the latter categories of information by reporting any changes in their periodic verifications. *See* 73 FR at 38067–68.

Paragraph (c)—Reporting of Initiation and Changes Concerning Name, Residence, Employment, and School Attendance

Paragraph (c) of § 72.7 is based on SORNA's express requirement that ''[a] sex offender shall, not later than 3 business days after each change of name, residence, employment, or student status, appear in person in at least 1 jurisdiction involved pursuant to [34 U.S.C. 20913(a)] and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry.'' 34 U.S.C. 20913(c); *see* 73 FR at 38065–66.

While SORNA provides a definite timeframe for reporting these changes (within three business days), specifies a means of reporting (through in-person appearance), and requires reporting of a change in ''at least 1 jurisdiction,'' it does not specify the particular jurisdiction in which each kind of change—*i.e.,* change in name, residence, employment, or school attendance—is to be reported. As discussed earlier, the Attorney General's authority under 34 U.S.C. 20912(b) to interpret and implement SORNA includes the authority to further specify the manner in which changes in registration information are to be reported where there are such gaps or ambiguities in SORNA's statutory provisions. In addition, the Attorney General now has express authority under 34 U.S.C. 20914(c) to prescribe the manner in which all required registration information is to be provided and updated. Exercising those authorities in paragraph (c) in § 72.7, the Attorney General interprets and implements the requirement of section 20913(c), and prescribes the manner in which sex offenders must provide and update information about name, residence, employment, or student status, by specifying the particular jurisdiction in which a sex offender must appear to report the changes section 20913(c) describes—in the residence jurisdiction to report a change of name or residence, in the employment jurisdiction to report a change of employment, and in the jurisdiction of school attendance to report a change in school attendance. *See* 73 FR at 38065.

For example, suppose that a sex offender resides in state A and commutes to work in state B. Pursuant to 34 U.S.C. 20913(a), the sex offender must register in both states—in state A as his residence state, and in state B as his employment state. Suppose that the sex offender changes his place of residence in state A and continues to work at the same place in state B. Logically, the sex offender should carry out his in-person appearance in state A to report his change of residence in state A, rather than in state B, where his contact with the latter state (employment) has not changed. Conversely, varying the example, suppose that the sex offender changes his place of employment from one employer to another in state B, but continues to reside in the same place in state A. The sex offender should carry out his in-person appearance in state B to report his change of employment in state B, rather than in state A, where his contact with the latter state (residence) has not changed.

These conclusions follow from the underlying policies of SORNA's in-person appearance requirements, which aim to provide opportunities for face to face encounters between sex offenders and persons responsible for their registrations in the local areas in which they will be present. Such encounters may help law enforcement personnel to familiarize themselves with the sex offenders in their areas, thereby facilitating the effective discharge of their protective and investigative functions in relation to those sex offenders, and helping to ensure that their responsibilities to track those offenders are taken seriously and carried out consistently. Likewise, from the perspective of sex offenders, face to face encounters with officers responsible for their monitoring in the local areas where they are present may help to impress on them that their identities, locations, and past criminal conduct are known to the authorities in those areas. Hence, there is a reduced likelihood of their avoiding detection and apprehension if they reoffend, and this may help them to resist the temptation to reoffend. *See* 73 FR at 38065, 38067.

These policies are furthered by sex offenders appearing in person to report changes in residence, employment, and school attendance in the jurisdictions in which the changes occur, rather than in other jurisdictions where they may be required to register, but within whose borders there has been no change in the location of the sex offender. Section 72.7(c) in the rule accordingly provides that changes in the most basic types of location information—residence, employment, school attendance—are to be reported through in-person appearances in the jurisdictions in which they occur. Section 72.7(c) also provides definiteness regarding the reporting of name changes under 34 U.S.C. 20913(c), providing that such changes are to be reported in the residence jurisdiction, as the jurisdiction in which a sex offender is likely to have his most substantial presence and contacts.

Paragraph (d)—Reporting of Departure and Termination Concerning Residence, Employment, and School Attendance

Paragraph (d) of § 72.7 requires sex offenders to inform the jurisdictions in which they reside if they will be commencing residence, employment, or school attendance in another jurisdiction or outside of the United States, and to inform the relevant jurisdictions if they will be terminating residence, employment, or school attendance in a jurisdiction. The Attorney General has previously articulated these requirements in the SORNA Guidelines. *See* 73 FR at

38065–67. These requirements are not part of the requirement under 34 U.S.C. 20913(c) to report certain changes through in-person appearances and they may be reported by any means allowed by registration jurisdictions in their discretion. *See* 73 FR at 38067.

Paragraph (d)(1) of § 72.7, relating to notice about intended commencement of residence, employment, or school attendance outside of a jurisdiction, and paragraph (d)(2), relating to notice about termination of residence, employment, or school attendance in a jurisdiction, are complementary, each applying in certain situations that may be outside the scope of the other. For example, § 72.7(d)(1) requires a sex offender to inform his residence jurisdiction if he will be starting a job in another jurisdiction, even if he will continue to reside where he has resided and will not be terminating any existing connection to the residence jurisdiction. Section 72.7(d)(2) requires a sex offender to inform a jurisdiction of his intended termination of residence, employment, or school attendance in that jurisdiction ''even if there is no ascertainable or expected future place of residence, employment, or school attendance for the sex offender.'' 73 FR at 38066. Regarding the underlying legal authority for § 72.7(d), its informational requirements overlap with types of information 34 U.S.C. 20914(a) expressly requires sex offenders to provide, which include information as to where a sex offender ''will reside,'' ''will be an employee,'' or ''will be a student.'' *Id.* 20914(a)(3)–(5). To the extent § 72.7(d) goes beyond the registration information that SORNA expressly requires, it is a straightforward exercise of the Attorney General's authority under 34 U.S.C. 20914(a)(8) to require any additional registration information.

Even before the enactment of International Megan's Law, the Attorney General's implementation authority under 34 U.S.C. 20912(b) was understood to include the authority to specify time and manner requirements for providing and updating registration information, as discussed above. Currently, section 20914(c) confers express authority on the Attorney General to adopt the time and manner requirements set forth in § 72.7(d)—*i.e.,* that (i) intended commencement of residence, employment, or school attendance in another jurisdiction or outside the United States is to be reported to the residence jurisdiction (by whatever means it allows) prior to any termination of residence in that jurisdiction and prior to commencing residence, employment, or school attendance in the other jurisdiction or outside of the United States; and (ii) intended termination of residence, employment, or school attendance in a jurisdiction is to be reported to the jurisdiction (by whatever means it allows) prior to the termination of residence, employment, or school attendance in the jurisdiction. Section 72.7(d)'s requirement that the intended actions or changes are to be reported prior to the termination of residence, employment, or school attendance in the relevant jurisdiction ensures that the reporting requirement applies while the sex offender is still subject to the requirement to register and keep the registration current in the jurisdiction pursuant to 34 U.S.C. 20913(a). This approach avoids any question about the validity of requiring a sex offender to provide or update information in a jurisdiction in which he is no longer required to register under SORNA.

The exercise of the authorities described above in § 72.7(d) furthers SORNA's objective of creating a ''comprehensive national system for the registration of [sex] offenders,'' 34 U.S.C. 20901, which reliably tracks sex offenders as they move away from and into registration jurisdictions. A sex offender's departure from a jurisdiction in which he is registered may eventually be discovered—*e.g.,* because he fails to appear for the next periodic verification of his registration, *see id.* 20918—even if he does not affirmatively notify the jurisdiction that he is leaving. But considerable time may elapse before that happens, leaving a cold trail for law enforcement efforts to locate the sex offender, if he does not register in the destination jurisdiction as SORNA requires.

For example, for a sex offender who decides to change his residence from one state to another, § 72.7(d) requires the sex offender to inform the state he is leaving prior to his departure, and § 72.7(c) requires him to inform the destination state within three business days of his arrival there. Under SORNA's procedures for information sharing among registration jurisdictions, the state of origin in such a case directly notifies the identified destination state. *See* 34 U.S.C. 20921(b), 20923(b)(3); 73 FR at 38065; 76 FR at 1638. If the sex offender then fails to appear and register as expected in the destination state, appropriate follow-up ensues, which may include investigative efforts by state and local law enforcement and the U.S. Marshals Service to locate the sex offender, issuance of a warrant for his arrest, and entry of information into national law enforcement databases reflecting the sex offender's status as an absconder or unlocatable. *See* 34 U.S.C. 20924; 73 FR at 38069. In the context of this system, the requirement of § 72.7(d) for a sex offender to notify the residence jurisdiction concerning his departure is an important element. It helps to ensure that agencies and officials responsible for sex offender registration and its enforcement are promptly made aware of major changes in the location of sex offenders, and thereby reduces the risk that sex offenders will disappear in the interstices between jurisdictions.

In so doing, § 72.7(d) resolves certain potential problems in the operation of SORNA's registration system following the Supreme Court's decision in *Nichols* v. *United States,* 136 S Ct. 1113 (2016), and a similar earlier decision by the Eighth Circuit Court of Appeals, *United States* v. *Lunsford,* 725 F.3d 859 (8th Cir. 2013). *Nichols* involved a sex offender who abandoned his residence in Kansas and relocated to the Philippines, without informing the Kansas registration authorities of his departure. The issue in the case was whether Nichols had violated 34 U.S.C. 20913(c), which requires a sex offender ''not later than three business days after each change of name, residence, employment, or student status'' to ''appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes'' in the required registration information.

The Court noted that subsection (a) of section 20913 mentions three jurisdictions as possibly ''involved''—''where the offender resides, where the offender is an employee, and where the offender is a student''— which would not include the state of Kansas after Nichols had moved to the Philippines. *Nichols*, 136 S Ct. at 1117 (quoting 34 U.S.C. 20913(a)). The Court further noted that section 20913(c) requires appearance and registration within three business days *after* a change of residence, and Nichols could not have appeared in Kansas after he left the state. *Id.* at 1117–18. The Court accordingly concluded that Nichols' failure to inform Kansas of his departure was not a violation of section 20913(c), since Kansas was no longer an ''involved'' jurisdiction in which section 20913(c) may require a sex offender to report changes in residence. *Id.* at 1118. Applying the same reasoning to the domestic context, if a sex offender terminates his residence in a state and thereafter takes up residence in another state, he cannot violate section 20913(c) by failing to inform the state he is leaving. For, following the termination of residence in that state, it

is no longer a ''jurisdiction involved'' for purposes of section 20913(c).

There is no comparable problem, however, with § 72.7(d)'s requirement that a sex offender inform a jurisdiction in which he resides of his intended departure from the jurisdiction, because § 72.7(d) does not depend on the requirements of section 20913(c). Rather, § 72.7(d) is grounded in the requirement of section 20914(a) that sex offenders provide certain information, including ''[a]ny other information required by the Attorney General,'' and the requirement of section 20914(c) that they report the required information in the ''time and manner . . . prescribed by the Attorney General.''

The Attorney General's exercise of his authorities under section 20914(a) and 20914(c) to require sex offenders to inform their registration jurisdictions that they will be going elsewhere in no way conflicts with *Nichols'* conclusion that section 20913(c) does not require such pre-departure notice of intended relocation. Section 20914(a)(8) says that sex offenders must provide ''[a]ny other information required by the Attorney General.'' The statute does not say that sex offenders must provide ''[a]ny other information required by the Attorney General, *except for information about intended departure from the jurisdiction.*'' *Nichols'* interpretation of section 20913(c) provides no basis for reading such an unstated limitation into section 20914(a)(8). Likewise, *Nichols* provides no basis for reading unstated limitations into the Attorney General's authority—now expressly granted by section 20914(c)—to prescribe time and manner requirements for providing and updating registration information, which adequately supports § 72.7(d)'s requirement that a sex offender inform the jurisdiction in which he resides about intended departure prior to any termination of residence and before going elsewhere.

The Attorney General's adoption of the § 72.7(d) requirements is also consistent with the Supreme Court's analysis of particular arguments and issues in *Nichols.* The salient points are as follows:

First, the Court in *Nichols* noted that the predecessor Federal sex offender registration law (the ''Wetterling Act'') required a sex offender to ''report the change of address to the responsible agency in the State the person is leaving,'' while SORNA contains no comparable provision that expressly requires sex offenders to notify jurisdictions they are leaving. 136 S Ct. at 1118 (quoting 42 U.S.C. 14071(b)(5) (2000)). However, SORNA does not attempt to articulate all the particulars of its registration requirements for sex offenders, instead authorizing the Attorney General to complete the regulatory scheme through interpretation and implementation of SORNA. *See, e.g.,* 34 U.S.C. 20912(b), 20913(d), 20914(a)(8), 20914(c). Given the extent of the Attorney General's powers under SORNA, it was not necessary for Congress to include an express provision in SORNA requiring sex offenders to notify jurisdictions they are leaving. Nor can there be any doubt that requiring such notification is now within the terms of the Attorney General's powers under SORNA, as discussed above. Indeed, 34 U.S.C. 20923(b)(3)—which provides that a jurisdiction's officials are to inform each jurisdiction ''from or to which a change of residence, employment, or student status occurs''— contemplates the Attorney General's adoption of requirements like those appearing in § 72.7(d). For if sex offenders were not required to advise the jurisdictions they leave of their departure and destination, those jurisdictions could not inform the jurisdictions ''to which'' sex offenders relocate.

Second, the Court in *Nichols* rejected an argument that a jurisdiction necessarily remains ''involved'' for purposes of section 20913(c) if the sex offender continues to appear on the jurisdiction's registry as a current resident. The Court responded that section 20913(a) gives jurisdictions where the offender resides, is an employee, or is a student as the only possibilities for an ''involved'' jurisdiction, and does not include a jurisdiction ''where the offender appears on a registry.'' 136 S Ct. at 1118. The Court said ''[w]e decline the . . . invitation to add an extra clause to the text of § [20]913(a).'' *Id.* In contrast, § 72.7(d) in this rule does not require the addition of an extra clause to section 20913(a). It involves the exercise of the Attorney General's authorities under SORNA to include the information described in § 72.7(d) in the information that a sex offender must provide to the jurisdictions described in the actual clauses of section 20913(a)—*i.e.,* those in which he resides, is an employee, or is a student.

Third, the Court rejected an argument that Nichols was required to inform Kansas of his intended departure based on 34 U.S.C. 20914(a)(3)'s direction to sex offenders to provide information about where they ''will reside.'' The Court noted that ''§ [20]914(a) merely lists the pieces of information that a sex offender must provide if and when he updates his registration; it says nothing about whether the offender has an obligation to update his registration in the first place.'' 136 S Ct. at 1118. In context, the Court's point was that section 20914(a)(3) just specifies a type of information sex offenders must provide, and does not say when they must provide it, so section 20914(a)(3) does not in itself require sex offenders to provide change of residence information in advance when they leave a jurisdiction. For example, without more, section 20914(a)(3) might be taken to entail that sex offenders must advise where they ''will reside'' when initially registering before release from imprisonment, *see* 34 U.S.C. 20913(b)(1), but not necessarily that they give advance notice to their registration jurisdictions of expected future residence on subsequent relocations.

However, this understanding of section 20914(a)(3) does not imply any limitation on the Attorney General's authority to require a sex offender to ''update his registration in the first place,'' *Nichols*, 136 S Ct. at 1118, on the basis of 34 U.S.C. 20914(c), which directs that ''[a] sex offender shall provide and update information required under subsection (a) . . . in conformity with any time and manner requirements prescribed by the Attorney General.'' Nor does it imply any limitation on the Attorney General's authority under SORNA to require sex offenders to report the full range of information described in § 72.7(d). In § 72.7(d), as discussed above, the Attorney General exercises these authorities to require sex offenders to inform jurisdictions of intended departure and expected future residence prior to any termination of residence in a jurisdiction.

Finally, the Court in *Nichols* rejected an argument that Nichols had to notify Kansas of his departure on the theory that he engaged in two changes of residence—the first when he abandoned his residence in Kansas, and the second when he checked into a hotel in the Philippines. 136 S Ct. at 1118–19. Section 72.7(d) in this rule, however, does not assume any such multiplicity in changes of residence. Rather, it establishes a freestanding requirement to inform registration jurisdictions in advance of termination of residence and commencement of intended future residence.

At the end of the *Nichols* decision, the Court noted that—considering the International Megan's Law amendments to SORNA—''[o]ur interpretation of the SORNA provisions at issue in this case in no way means that sex offenders will be able to escape punishment for leaving the United States without

notifying the jurisdictions in which they lived while in this country.'' 136 S. Ct. at 1119. The Court noted the addition of a new subsection (b) to 18 U.S.C. 2250, which ''criminalized the 'knowin[g] fail[ure] to provide information required by [SORNA] relating to intended travel in foreign commerce,' '' and the addition of 34 U.S.C. 20914(a)(7), which requires sex offenders to provide information about intended international travel. 136 S. Ct. at 1119 (brackets in original) (quoting 18 U.S.C. 2250(b)(2)). The Court concluded: ''We are thus reassured that our holding today is not likely to create 'loopholes and deficiencies' in SORNA's nationwide sex-offender registration scheme.'' *Id.* (quoting *United States* v. *Kebodeaux,* 570 U.S. 387, 399 (2013)).

Section 72.7(d) in this rule similarly helps to ensure that the interpretation of 34 U.S.C. 20913(c) in *Nichols* and *Lunsford* does not create ''loopholes and deficiencies'' in the operation of SORNA's tracking system, in relation to both domestic and international relocations. For example, consider a sex offender who terminates his residence in a state without informing the state. Suppose the sex offender is later found elsewhere in the United States, but he cannot be shown to have taken up residence—or to have been employed or a student—in another jurisdiction after leaving the original state of residence. In light of *Nichols,* section 20913(c) does not require the sex offender to report his relocation to the original state because it is no longer an ''involved'' jurisdiction after he leaves, and there may be no other relevant jurisdiction in which he must report the change, *i.e.,* one in which he presently resides, is employed, or is a student. However, with § 72.7(d) in effect, a sex offender in this circumstance will have violated 34 U.S.C. 20914(a) and (c)'s requirements to provide registration information, including ''[a]ny other information'' prescribed by the Attorney General, in the time and manner prescribed by the Attorney General. At a minimum, in the case described, the sex offender would have failed to provide the information that he is terminating his residence in the original state of residence prior to his termination of residence in that state, contravening § 72.7(d).

Hence, § 72.7(d) provides an additional safeguard against registered sex offenders' simply disappearing without informing anyone about their relocation. The consequences for non-compliant sex offenders include potential prosecution by registration jurisdictions, which have been encouraged to adopt departure notification requirements similar to § 72.7(d) in their registration laws by the Attorney General's prior articulation of those requirements in the SORNA Guidelines. S*ee* 73 FR at 38065–66. The consequences of noncompliance with § 72.7(d) will also include potential Federal prosecution under 18 U.S.C. 2250 for violations committed under circumstances supporting Federal jurisdiction.

Sex offenders must comply both with the requirements of § 72.7(c) and with the requirements of § 72.7(d). For example, suppose a sex offender changes residence from state A to state B. It is not sufficient if (i) the sex offender complies with § 72.7(d) by telling state A that he is leaving and going to state B, but (ii) he fails to appear in state B and register there as required by § 72.7(c), and then (iii) he attempts to excuse his failure to comply with § 72.7(c) on the ground that state A could have told state B about his relocation. Likewise, it is not sufficient if the sex offender in such a case (i) complies with § 72.7(c) by registering in state B, but (ii) he fails to inform state A about the intended relocation prior to his departure, and then (iii) he attempts to excuse his failure to comply with § 72.7(d) on the ground that state B could have told state A about his relocation. As discussed above, appearance and registration by sex offenders in jurisdictions in which they commence residence, employment, or school attendance, as required by § 72.7(c), and notification by sex offenders to jurisdictions in which they terminate residence, employment, or school attendance, as required by § 72.7(d), both serve important purposes in SORNA's registration system as articulated in this rule and the previously issued SORNA guidelines. Compliance with both requirements is necessary to the seamless and effective operation of that system for the reasons explained above.

Paragraph (e)—Reporting of Changes in Information Relating to Remote Communication Identifiers, Temporary Lodging, and Vehicles

Paragraph (e) requires sex offenders to report to their residence jurisdictions within three business days changes in remote communication identifier information, temporary lodging information, and vehicle information. In terms of legal authority, as discussed earlier, these requirements are supportable on the basis of the Attorney General's authority to interpret and implement SORNA's requirement to keep the registration current, the Attorney General's authority to expand the information that sex offenders must provide to registration jurisdictions, and the Attorney General's authority to prescribe the time and manner for providing and updating registration information. *See* 34 U.S.C. 20912(b), 20913(a), 20914(a)(8), (c), 20916(b); 73 FR at 38066; 76 FR at 1637. (The SORNA Guidelines state that such changes are to be reported ''immediately'' and explain at an earlier point that ''immediately'' in the context of SORNA's timing requirements means within three business days, *see* 73 FR at 38060, 38066.) SORNA does not require that these changes be reported through in-person appearances and they may be reported by any means allowed by registration jurisdictions in their discretion. *See id.* at 38067.

Paragraph (f)—Reporting of International Travel

Paragraph (f) of § 72.7 requires sex offenders to report intended travel outside of the United States to their residence jurisdictions. The expected travel must be reported at least 21 days in advance and, if applicable, prior to any termination of residence in the jurisdiction. Reporting of information about intended international travel is an express SORNA requirement following SORNA's amendment by International Megan's Law. S*ee* 34 U.S.C. 20914(a)(7); Public Law 114–119, sec. 6(a). The underlying reasons for requiring reporting of international travel are explained above in connection with § 72.6(d) of this rule.

The 21-day advance notice requirement is designed to provide relevant agencies, including the U.S. Marshals Service and INTERPOL Washington-U.S. National Central Bureau, sufficient lead time for any investigation or inquiry that may be warranted relating to the sex offender's international travel, and for notification of U.S. and foreign authorities in destination countries, prior to the sex offender's arrival in a destination country. The requirement that the intended international travel be reported prior to any termination of residence in the jurisdiction—potentially an issue in cases in which the sex offender is terminating his U.S. residence and relocating to a foreign country—ensures that a SORNA violation has occurred in case of noncompliance while the sex offender is still residing in the jurisdiction and hence required by 34 U.S.C. 20913(a) to register and keep the registration current in that jurisdiction. The requirement to report intended international travel at least 21 days in advance applies in relation to all international travel, including both cases in which the sex

offender is temporarily traveling abroad while maintaining a domestic residence and cases in which the sex offender is terminating his residence in the particular jurisdiction or the United States.

The rule recognizes, however, that reporting of intended international travel 21 days in advance is not possible in some circumstances. Section 72.8(a)(2) of the rule generally addresses situations in which sex offenders cannot comply with SORNA requirements because of circumstances beyond their control, and it specifically addresses inability to comply with the timeframe for reporting of international travel in Example 3 in that provision.

In terms of legal authority, the requirement to report intended international travel to the residence jurisdiction at least 21 days in advance and prior to any termination of residence is supportable as an exercise of the express authority of the Attorney General under 34 U.S.C. 20914(c), which states in part that ''[a] sex offender shall provide and update . . . information relating to intended travel outside the United States . . . in conformity with any time and manner requirements prescribed by the Attorney General.'' As discussed above, the international travel reporting requirement, including its associated timeframe requirement, is also supportable on the basis of other SORNA authorities of the Attorney General, which were relied on in SORNA guidelines preceding the addition of 34 U.S.C. 20914(a)(7), (c) by International Megan's Law. These authorities include the Attorney General's authority under 34 U.S.C. 20914(a)(8) to expand the range of required registration information and the Attorney General's authority under 34 U.S.C. 20912(b) to issue rules to interpret and implement SORNA's requirement to keep the registration current.

Paragraph (g)—Compliance With Jurisdictions' Requirements for Registering and Keeping the Registration Current

Paragraph (g) of § 72.7 requires sex offenders to register and keep the registration current in conformity with the time and manner requirements of their registration jurisdictions, where they have not done so in the time and manner normally required under SORNA.

SORNA generally requires sex offenders to register initially before release from imprisonment or within three business days of sentencing, but it recognizes that sex offenders may be unable to comply with these requirements in some circumstances. The difficulty can arise in cases in which a jurisdiction has no provision for registering certain sex offenders as required by SORNA at the time of their release—or even no registration program at all at that time—but the jurisdiction can register them later as it progresses in its implementation of SORNA's requirements. The SORNA Guidelines provide guidance to registration jurisdictions about integrating previously excluded sex offenders into their registration programs in such circumstances and ensuring that these sex offenders fully comply with SORNA's requirements. *See* 73 FR at 38063–64; *see also Smith,* 538 U.S. 84 (application of new sex offender registration requirements to previously convicted sex offenders does not violate the constitutional prohibition on ex post facto laws).

Because the normal timeframe for initial registration under SORNA may be past in these situations, SORNA authorizes the Attorney General to prescribe rules for registration. Specifically, 34 U.S.C. 20913(d) gives the Attorney General the authority to specify the applicability of SORNA's requirements to sex offenders with pre-SORNA or pre-SORNA-implementation convictions, ''and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with'' SORNA's initial registration requirements. More broadly, as discussed above, the Attorney General's general authority under 34 U.S.C. 20912(b) to interpret and implement SORNA includes the authority to fill gaps in SORNA's time and manner requirements for registering and keeping the registration current, and 34 U.S.C. 20914(c) expressly requires sex offenders to provide and update registration information required by SORNA in the time and manner prescribed by the Attorney General.

In section 72.7(g) in this rule, the Attorney General proposes to exercise his authorities under 34 U.S.C. 20912(b), 20913(d), and 20914(c) to require sex offenders to register and keep their registrations current in the time and manner specified by their registration jurisdictions, where the sex offenders have not registered or kept the registrations up to date in the time and manner normally required by SORNA as articulated in the earlier portions of § 72.7. This proposal complements the directions to registration jurisdictions in the SORNA Guidelines about integrating previously excluded sex offenders and previously omitted SORNA requirements into their registration programs, with suitable timeframes and procedures, as the jurisdictions progress with SORNA implementation. *See* 73 FR at 38063–64. Of course sex offenders are independently required by the laws of their registration jurisdictions to comply with the jurisdictions' time and manner specifications for registering and updating their registrations. The effect of § 72.7(g) is to adopt the jurisdictions' time and manner specifications as SORNA requirements in the situations it covers.

Section 72.7(g)(1) includes four examples. The first example concerns a situation in which a state does not register sex offenders before release, but a sex offender can register soon after release in conformity with the state's procedures. The second example concerns a situation in which a jurisdiction does not register certain sex offenders at all at the time of their release or entry into the jurisdiction, but a sex offender in the excluded class becomes able to register at a later time and is directed by the jurisdiction to do so after it extends its registration requirements.

As the Supreme Court noted in *Reynolds,* SORNA, in section 20913(b), ''says that a sex offender must register before completing his prison term, but the provision says nothing about when a pre-Act offender who completed his prison term pre-Act must register. . . . Pre-Act offenders . . . might, on their own, reach different conclusions about whether, or how, the new registration requirements applied to them. A ruling from the Attorney General [under section 20913(d)], however, could diminish or eliminate those uncertainties . . . .'' 565 U.S. at 441–42. In § 72.7(g), the Attorney General exercises his authorities under sections 20912(b), 20913(d), and 20914(c) to ''eliminate those uncertainties'' in conformity with Congress's intent concerning the filling of ''potential lacunae'' in SORNA, 565 U.S. at 441–42. Section 72.7(g) fills the gaps in such cases by adopting the timing rules and procedures of the relevant registration jurisdictions. This applies in relation to sex offenders who do not register initially in conformity with SORNA because they were convicted and released before SORNA's enactment, as described by the Court in *Reynolds,* and in relation to all other sex offenders who do not register in accordance with the normal time and manner requirements under SORNA, *e.g.,* because of shortfalls in a jurisdictions' registration requirements that may later be corrected or that allow registration in some variant way.

The third example in § 72.7(g)(1) concerns a sex offender in a jurisdiction that initially does not provide for sex offenders' periodically updating registrations through verification appearances as required by SORNA, but the jurisdiction later directs the sex offender to do so after it incorporates this aspect of SORNA into its registration program. Since the periodic verification appearances required by 34 U.S.C. 20918 fall under SORNA's requirement to keep the registration current and involve updating the registration information required by SORNA, it is within the Attorney General's authority under 34 U.S.C. 20912(b) and 20914(c) to specify the time and manner for the verifications where SORNA's verification requirement or normal timeframes for verifications have not been followed. Section 72.7(g)(1) directs sex offenders to comply with the jurisdiction's requirements for periodic verification in such situations.

The fourth example in § 72.7(g)(1) concerns a sex offender who does not provide particular information within the time required by SORNA because a jurisdiction's informational requirements fall short of SORNA's requirements but are later brought into line. The example illustrates the point by reference to email addresses. As provided in § 72.6(b), sex offenders must include this information when they register and, as provided in § 72.7(e), they must report any subsequent changes within three business days. Where the normal reporting time is past when a jurisdiction decides to include a type of information in its sex offender registry, § 72.7(g)(1) requires sex offenders to comply with the jurisdiction's directions to provide the information at a later time.

Section 72.7(g)(2) provides that, in a prosecution under 18 U.S.C. 2250, § 72.7(g)(1) does not relieve a sex offender of the need to show an inability to comply with SORNA as an affirmative defense to liability. The situations described in § 72.7(g)(1), which may involve noncompliance with SORNA's requirements because of deficits in registration jurisdictions' requirements or procedures, overlap with situations in which a sex offender may have a defense under 18 U.S.C. 2250(c) because he was prevented from complying with SORNA by circumstances beyond his control. However, the purpose and effect of § 72.7(g)(1) are to hold sex offenders to compliance with the registration rules and procedures of registration jurisdictions in the situations it covers. Section 72.7(g) does not, in any case, relieve sex offenders of the obligation to comply fully with SORNA if able to do so or shift the burden of proof to the government to establish that a registration jurisdiction's procedures would have allowed a sex offender to register or keep the registration current in conformity with SORNA. Rather, the defense under 18 U.S.C. 2250(c) is an affirmative defense, as that provision explicitly provides, and as §§ 72.7(g)(2) and 72.8(a)(2) in this rule reiterate.

Section 72.8—Liability for Violations

Section 72.8 of the rule explains the liability of sex offenders for SORNA violations and limitations on that potential liability.

Paragraph (a)(1)—Offense

SORNA's criminal provision, 18 U.S.C. 2250, provides criminal liability for sex offenders based on SORNA violations.

Section 72.8(a)(1)(i) in the rule refers to potential criminal liability under 18 U.S.C. 2250(a). Section 2250(a) authorizes imprisonment for up to 10 years based on a knowing failure to register or update a registration as required by SORNA. Federal criminal liability may result under this provision when the violation occurs under circumstances supporting Federal jurisdiction as specified in the statute. These jurisdictional circumstances include (i) violation of SORNA by sex offenders convicted of sex offenses under Federal (including military) law, the law of the District of Columbia, Indian tribal law, or the law of a U.S. territory or possession; or (ii) travel in interstate or foreign commerce or entering, leaving, or residing in Indian country. Section 2250(a) reaches all types of SORNA violations, including failure to register or keep the registration current in each jurisdiction of residence, employment, or school attendance, as required by 34 U.S.C. 20913; failure to provide or update registration information required by 34 U.S.C. 20914; or failure to appear periodically and verify the registration information, as required by 34 U.S.C. 20918.

Section 72.8(a)(1)(ii) in the rule refers to potential criminal liability under 18 U.S.C. 2250(b), which was added by International Megan's Law. *See* Public Law 114–119, sec. 6(b). Section 2250(b) defines an offense that specifically reaches violations of SORNA's international travel reporting requirement. The provision authorizes imprisonment for up to 10 years for a sex offender who (i) knowingly fails to provide information required by SORNA relating to intended travel in foreign commerce and (ii) ''engages or attempts to engage in the intended travel in foreign commerce.'' The jurisdictional language in section 2250(b) reaches cases in which the contemplated travel is not carried out, in addition to those in which the sex offender does travel abroad. For example, consider a sex offender who (i) purchases a plane ticket to a foreign destination but (ii) fails to report the intended international travel as required by SORNA and (iii) does not actually leave the country because the unreported travel is detected by the authorities who arrest him at the airport. The attempted travel in foreign commerce provides a sufficient jurisdictional basis for Federal prosecution under section 2250(b).

Section 72.8(a)(1)(iii) in the rule explains the condition for liability under 18 U.S.C. 2250(a)–(b) that the defendant ''knowingly'' fail to comply with a SORNA requirement. The ''knowingly'' limitation ensures that sex offenders are not held liable under section 2250 for violations of registration requirements they did not know about. However, this does not require knowledge that the requirement is imposed by SORNA. State sex offenders, for example, are likely to be instructed in the registration process regarding many of the registration requirements appearing in SORNA, which are widely paralleled in state registration laws, such as the need to report changes in residence, employment, internet identifiers, and vehicle information; the need to report intended international travel; and the need to appear periodically to update and verify registration information. The acknowledgment forms obtained from sex offenders in registration often provide a means of establishing their knowledge of the registration requirements in later prosecutions for violations. *See* 76 FR at 1634–35, 1638. But sex offenders may not be informed that the registration requirements they are subject to are imposed by a particular Federal law, SORNA. This does not impugn the fairness or propriety of holding sex offenders liable under 18 U.S.C. 2250 for knowingly violating a registration requirement that is in fact imposed by SORNA, so long as they are aware of an obligation from some source to comply with the requirement. *See, e.g., United States* v. *Elkins,* 683 F.3d 1039, 1050 (9th Cir. 2012); *United States* v. *Whaley,* 577 F.3d 254, 261–62 (5th Cir. 2009). Section 72.8(a)(1)(iii) makes these

points about 18 U.S.C. 2250's knowledge requirement in the rule.

Paragraph (a)(2)—Defense

Subsection (c) of 18 U.S.C. 2250 provides an affirmative defense to liability under certain conditions where uncontrollable circumstances prevented a sex offender from complying with SORNA, so long as the sex offender complied as soon as the preventing circumstances ceased. Section 72.8(a)(2) in the rule reproduces this affirmative defense provision and provides examples of its operation.

Registration is a reciprocal process, involving the provision of registration information by sex offenders, and the registration jurisdiction's acceptance of the information for inclusion in the sex offender registry. The circumstances preventing compliance with SORNA under section 2250(c) accordingly may be a registration jurisdiction's failure or refusal to carry out the reciprocal role needed to effect registration, or the updating of a registration, as required by SORNA.

Example 1 in § 72.8(a)(2) illustrates this type of situation, describing a case in which a sex offender cannot appear and report an inter-jurisdictional change of residence within three business days because the office with which he needs to register will not meet with him for a week. The case implicates both 34 U.S.C. 20913(a)'s requirement that a sex offender register in each jurisdiction in which he resides and 34 U.S.C. 20913(c)'s requirement that sex offenders report changes of residence within three business days. These provisions' net effect is that a sex offender establishing residence in a new jurisdiction must register there but with a three-business-days grace period. In the case described, 18 U.S.C. 2250(c) would excuse the failure to report within the three-business-day timeframe. However, the inability to meet section 20913(c)'s specific timeframe does not obviate the need to comply with section 20913(a)'s requirement to register in each state of residence. Nothing prevents the sex offender from complying with this registration requirement once the office is willing to meet with him, so he will need to appear and carry out the registration at the appointed time in order to have the benefit of the 18 U.S.C. 2250(c) defense.

Example 2 in § 72.8(a)(2) also illustrates a situation in which the circumstance preventing compliance with SORNA is a failure by the registration jurisdiction to carry out a necessary reciprocal role. The specific situation described in the example is a state's refusal to register sex offenders based on the offense for which the sex offender was convicted. For example, SORNA requires registration based on conviction for child pornography possession offenses, *see* 34 U.S.C. 20911(7)(G), but some states that have not fully implemented SORNA's requirements in their registration programs may be unwilling to register a sex offender on the basis of such an offense. Section 2250(c)'s excuse of the failure to register terminates if the state subsequently becomes willing to register the sex offender, because the circumstance preventing compliance with SORNA no longer exists. However, liability based on a continuing failure by the sex offender to comply with SORNA in such a case—following a change in state policy or practice allowing compliance—depends on the sex offender's becoming aware of the change since, as discussed above, 18 U.S.C. 2250 does not impose liability for violation of unknown registration obligations. *Cf.* 73 FR at 38063–64 (direction to registration jurisdictions to instruct sex offenders about new or additional registration duties in connection with SORNA implementation).

Example 3 in § 72.8(a)(2) describes a situation in which the circumstance preventing compliance with SORNA relates to the situation of the sex offender rather than the registration jurisdiction. The second sentence of § 72.7(f) in the rule requires in part that a sex offender report intended international travel 21 days in advance, which he cannot do if he does not anticipate a trip abroad that far in advance. In such a case, as described in the example, 18 U.S.C. 2250(c) would excuse a sex offender's failure to report the travel 21 days in advance. *Cf.* 76 FR at 1638 (''[R]equiring 21 days advance notice may occasionally be unnecessary or inappropriate. For example, a sex offender may need to travel abroad unexpectedly because of a family or work emergency.''). However, inability to comply with the 21-day timeframe in a particular case does not prevent a sex offender from otherwise complying with SORNA's requirements to inform the residence jurisdiction about intended international travel, appearing in 34 U.S.C. 20914(a)(7) and in §§ 72.6(d) and 72.7(f) in this rule. Hence, once the intention to travel exists, the sex offender must inform the registration jurisdiction to avoid liability under 18 U.S.C. 2250.

Paragraph (b)—Supervision Condition

Section 72.8(b) recounts that, for sex offenders convicted of Federal offenses, compliance with SORNA is a mandatory condition of probation and supervised release. *See* 18 U.S.C. 3563(a)(8), 3583(d) (third sentence). Violation of this condition may result in revocation of release. *See* 18 U.S.C. 3565(a)(2), 3583(e)(3). Section 72.8(b) also notes that compliance with SORNA is a mandatory condition of parole for sex offenders convicted of Federal offenses, *see* 18 U.S.C. 4209(a) (second sentence), a requirement of narrow application given the abolition of parole in Federal cases, except for offenses committed before November 1, 1987.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities for the purposes of that Act because the regulation only articulates SORNA's registration requirements for sex offenders.

Executive Orders 12866 and 13563—Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation, and Executive Order 13563, ''Improving Regulation and Regulatory Review.'' The regulation expands part 72 of title 28 of the Code of Federal Regulations to provide a concise and comprehensive statement of what sex offenders must do to comply with SORNA's requirements, following express requirements appearing in SORNA and previous exercises of authority SORNA grants to the Attorney General to interpret and implement SORNA. The justification of these requirements as means of furthering SORNA's objectives is explained in the preamble to this regulation and in previous SORNA-related documents, including the rulemaking entitled ''Applicability of the Sex Offender Registration and Notification Act,'' 75 FR 81849 (final rule), 72 FR 8894 (interim rule); the SORNA Guidelines, 73 FR 38030; and the SORNA Supplemental Guidelines, 76 FR 1630. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has been reviewed by the Office of Management and Budget.

The Department of Justice expects that the proposed rule will not entail new costs and will result in a number

of benefits. For registration jurisdictions, there are no new costs because their requirements under SORNA continue to be those articulated in the previously issued SORNA guidelines. Likewise, for sex offenders, the requirements articulated in the rule either appear expressly in SORNA or have previously been articulated by the Attorney General in the SORNA guidelines. The procedures by which sex offenders register will continue to depend on the registration processes of the jurisdictions that register them, which will not be made more time-consuming or expensive or otherwise changed by this rule.

In terms of benefits, the rule will provide in one place a clear, concise, and comprehensive statement of sex offenders' registration requirements under SORNA. This will reduce any expenditure by sex offenders of time or money required for inquiry with state or Federal authorities or others to resolve uncertainties, or required in attempting to comply with perceived registration requirements under SORNA that go beyond the requirements the Attorney General has actually specified. The clarity provided by this rule will make it easier for sex offenders to determine what SORNA requires them to do and thereby facilitate compliance with SORNA.

There are also expected benefits for the government. As the preamble explains, the rule's comprehensive articulation of SORNA's registration requirements in regulations addressed to sex offenders will provide a secure basis for Federal prosecution of knowing violations of any of SORNA's requirements. It will resolve specific problems that have arisen in past litigation or can be expected to arise in future litigation if not clarified and resolved by this rule, thereby avoiding the expenditure of litigation resources on these matters.

As explained in the existing SORNA guidelines, SORNA aims to prevent the commission of sex offenses, and to bring the perpetrators of such offenses to justice more speedily and reliably, by enabling the authorities to better identify, track, and monitor released sex offenders and by informing the public regarding the presence of released sex offenders in the community. *See* 73 FR at 38044–45. Hence, by facilitating the enforcement of, and compliance with, SORNA's registration requirements, and enhancing the basis for public notification, the rule is expected to further SORNA's public safety objectives and reduce the time and resources required in achieving these objectives.

While the proposed rule is expected to result in cost reductions, as discussed above, additional information would be helpful in determining the extent of these savings. We accordingly seek comment on the extent to which this rule will result in reductions in time, expense, or other costs.

Executive Order 13132—Federalism

This regulation 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. There has been substantial consultation with state officials regarding the interpretation and implementation of SORNA. The previously issued SORNA Guidelines and SORNA Supplemental Guidelines articulate the requirements for implementation of the SORNA standards by states and other jurisdictions in their sex offender registration and notification programs, requirements that are not changed by this regulation's provision of a separate statement of the registration obligations of sex offenders under SORNA. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not 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, 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. This rule adds provisions to part 72 of title 28 of the Code of Federal Regulations that articulate SORNA's registration requirements for sex offenders, including where, when, and how long sex offenders must register, what information they must provide, and how they must keep their registrations current. The Attorney General has previously addressed these matters and has resolved them in the same way in the SORNA Guidelines, appearing at 73 FR 38030, and in the SORNA Supplemental Guidelines, appearing at 76 FR 1630. Those previously issued sets of guidelines determine what state, local, and tribal jurisdictions must do to achieve substantial implementation of the SORNA standards in their registration programs. Reiteration of some of these requirements in a concise set of directions to sex offenders in this rule will not change what jurisdictions need to do to implement SORNA or affect their costs in doing so.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a ''major rule'' as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 28 CFR Part 72

Crime, Information, Law enforcement, Prisoners, Prisons, Probation and parole, Records.

■ Accordingly, for the reasons stated in the preamble, chapter I of title 28 of the Code of Federal Regulations is proposed to be amended by revising part 72 to read as follows:

PART 72—SEX OFFENDER REGISTRATION AND NOTIFICATION

Sec.
72.1 Purpose.
72.2 Definitions.
72.3 Applicability of the Sex Offender Registration and Notification Act.
72.4 Where sex offenders must register.
72.5 How long sex offenders must register.
72.6 Information sex offenders must provide.
72.7 How sex offenders must register and keep the registration current.
72.8 Liability for violations.

Authority: 34 U.S.C. 20901–45; Pub. L. 109–248, 120 Stat. 587; Pub. L. 114–119, 130 Stat. 15.

§ 72.1 Purpose.

(a) This part specifies the registration requirements of the Sex Offender Registration and Notification Act (SORNA), 34 U.S.C. 20901 *et seq.,* and the scope of those requirements' application. The Attorney General has the authority to specify the requirements of SORNA and their applicability as provided in this part pursuant to provisions of SORNA, including 34 U.S.C. 20912(b), 20913(d), and 20914(a)(8), (c).

(b) This part does not preempt or limit any obligations of or requirements relating to sex offenders under other Federal laws, rules, or policies, or under the laws, rules, or policies of registration jurisdictions or other entities. States and other governmental entities may prescribe registration requirements and other requirements, with which sex offenders must comply, that are more extensive or stringent than those prescribed by SORNA.

§ 72.2 Definitions.

All terms used in this part have the same meaning as in SORNA.

§ 72.3 Applicability of the Sex Offender Registration and Notification Act.

The requirements of SORNA apply to all sex offenders. All sex offenders must comply with all requirements of that Act, regardless of when the conviction of the offense for which registration is required occurred (including if the conviction occurred before the enactment of that Act), regardless of whether a jurisdiction in which registration is required has substantially implemented that Act's requirements or has implemented any particular requirement of that Act, and regardless of whether any particular requirement or class of sex offenders is mentioned in examples in this regulation or in other regulations or guidelines issued by the Attorney General.

Example 1. A sex offender is federally convicted of aggravated sexual abuse under 18 U.S.C. 2241 in 1990 and is released following imprisonment in 2009. The sex offender is subject to the requirements of SORNA and could be held criminally liable under 18 U.S.C. 2250 for failing to register or keep the registration current in any jurisdiction in which the sex offender resides, is an employee, or is a student.

Example 2. A sex offender is convicted by a state jurisdiction in 1997 for molesting a child and is released following imprisonment in 2000. The sex offender initially registers as required but relocates to another state in 2009 and fails to register in the new state of residence. The sex offender has violated the requirement under SORNA to register in any jurisdiction in which he resides, and could be held criminally liable under 18 U.S.C. 2250 for the violation because he traveled in interstate commerce.

§ 72.4 Where sex offenders must register.

A sex offender must register, and keep the registration current, in each jurisdiction in which the offender resides, is an employee, or is a student. For initial registration purposes only, a sex offender must also register in the jurisdiction in which convicted if that jurisdiction is different from the jurisdiction of residence.

§ 72.5 How long sex offenders must register.

(a) *Duration.* A sex offender has a continuing obligation to register and keep the registration current (except when the sex offender is in custody or civilly committed) for the following periods of time:

(1) 15 years, if the offender is a tier I sex offender;

(2) 25 years, if the offender is a tier II sex offender; and

(3) The life of the offender, if the offender is a tier III sex offender.

(b) *Commencement.* The registration period begins to run—

(1) When a sex offender is released from imprisonment following conviction for the offense giving rise to the registration requirement, including in cases in which the term of imprisonment is based wholly or in part on the sex offender's conviction for another offense; or

(2) If the sex offender is not sentenced to imprisonment, when the sex offender is sentenced for the offense giving rise to the registration requirement.

(c) *Reduction.* If a tier I sex offender has maintained for 10 years a clean record, as described in 34 U.S.C. 20915(b)(1), the period for which the sex offender must register and keep the registration current under paragraph (a) of this section is reduced by 5 years. If a tier III sex offender required to register on the basis of a juvenile delinquency adjudication has maintained a clean record, as described in 34 U.S.C. 20915(b)(1), for 25 years, the period for which the sex offender must register and keep the registration current under paragraph (a) of this section is reduced to the period for which the clean record has been maintained.

§ 72.6 Information sex offenders must provide.

Sex offenders must provide the following information for inclusion in the sex offender registries of the jurisdictions in which they are required to register:

(a) *Name, date of birth, and Social Security number.*

(1) The name of the sex offender, including any alias used by the sex offender.

(2) The sex offender's date of birth and any date that the sex offender uses as his purported date of birth.

(3) The Social Security number of the sex offender and any number that the sex offender uses as his purported Social Security number.

(b) *Remote communication identifiers.* All designations the sex offender uses for purposes of routing or self-identification in internet or telephonic communications or postings, including email addresses and telephone numbers.

(c) *Residence, temporary lodging, employment, and school attendance.* (1) The address of each residence at which the sex offender resides or will reside or, if the sex offender has no present or expected residence address, other information describing where the sex offender resides or will reside with whatever definiteness is possible under the circumstances.

(2) Information about any place in which the sex offender is staying when away from his residence for seven or more days, including the identity of the place and the period of time the sex offender is staying there.

(3) The name and address of any place where the sex offender is or will be an employee or, if the sex offender is or will be employed but with no fixed place of employment, other information describing where the sex offender works or will work with whatever definiteness is possible under the circumstances.

(4) The name and address of any place where the sex offender is a student or will be a student.

(d) *International travel.* Information relating to intended travel outside the United States, including any anticipated itinerary, dates and places of departure from, arrival in, or return to the United States and each country visited, carrier and flight numbers for air travel, destination country or countries and address or other contact information therein, and means and purpose of travel.

(e) *Passports and immigration documents.* Information about each passport the sex offender has and, if the sex offender is an alien, information about any document or documents establishing the sex offender's immigration status, including passport or immigration document type and number.

(f) *Vehicle information.* The license plate number and a description of any vehicle owned or operated by the sex offender, including watercraft and aircraft in addition to land vehicles. If a vehicle has no license plate but has some other type of registration number or identifier, then the registration number or identifier must be provided. Information must also be provided as to where any vehicle owned or operated by the sex offender is habitually parked, docked, or otherwise kept.

(g) *Professional licenses.* Information concerning all licensing of the sex offender that authorizes the sex offender

to engage in an occupation or carry out a trade or business.

§ 72.7 How sex offenders must register and keep the registration current.

(a) *Initial registration*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, a sex offender must register before release from imprisonment following conviction for the offense giving rise to the registration requirement, or, if the sex offender is not sentenced to imprisonment, within three business days after being sentenced for that offense.

(2) *Special rules for certain cases.* The following special requirements apply:

(i) *Federal and military offenders.* A sex offender who is released from Federal or military custody, or who is convicted for a Federal or military sex offense but not sentenced to imprisonment, must register within three business days of entering or remaining in a jurisdiction to reside following the release or sentencing.

(ii) *Foreign convictions.* A sex offender required to register on the basis of a conviction in a foreign country must register within three business days of entering any jurisdiction in the United States to reside, work, or attend school.

(b) *Periodic in-person verification.* A sex offender must appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which the offender is required to register. In carrying out the required verification of information in each registry, the sex offender must correct any information that has changed or is otherwise inaccurate and must report any new registration information. A sex offender must appear in person for these purposes not less frequently than—

(1) Each year, if the offender is a tier I sex offender;

(2) Every six months, if the offender is a tier II sex offender; and

(3) Every three months, if the offender is a tier III sex offender.

(c) *Reporting of initiation and changes concerning name, residence, employment, and school attendance.* A sex offender who enters a jurisdiction to reside, or who resides in a jurisdiction and changes his name or his place of residence in the jurisdiction, must appear in person in that jurisdiction and register or update the registration within three business days. A sex offender who commences employment or school attendance in a jurisdiction, or who changes employer, school attended, or place of employment or school attendance in a jurisdiction, must appear in person in that jurisdiction and register or update the registration within three business days.

(d) *Reporting of departure and termination concerning residence, employment, and school attendance.* (1) A sex offender residing in a jurisdiction must inform that jurisdiction (by whatever means the jurisdiction allows) if the sex offender will be commencing residence, employment, or school attendance in another jurisdiction or outside of the United States. The sex offender must so inform the jurisdiction in which he is residing prior to any termination of residence in that jurisdiction and prior to commencing residence, employment, or school attendance in the other jurisdiction or outside of the United States.

(2) A sex offender who will be terminating residence, employment, or school attendance in a jurisdiction must so inform that jurisdiction (by whatever means the jurisdiction allows) prior to the termination of residence, employment, or school attendance in the jurisdiction.

(e) *Reporting of changes in information relating to remote communication identifiers, temporary lodging, and vehicles.* A sex offender must report within three business days to his residence jurisdiction (by whatever means the jurisdiction allows) any change in remote communication identifier information, as described in § 72.6(b), temporary lodging information, as described in § 72.6(c)(2), and any change in vehicle information, as described in § 72.6(f).

(f) *Reporting of international travel.* A sex offender must report intended travel outside the United States, including the information described in § 72.6(d), to his residence jurisdiction (by whatever means the jurisdiction allows). The sex offender must report the travel information to the jurisdiction at least 21 days in advance of the intended travel and, if the sex offender is terminating his residence in the jurisdiction, prior to his termination of residence in the jurisdiction.

(g) *Compliance with jurisdictions' requirements for registering and keeping the registration current.* (1) A sex offender who does not comply with a requirement of SORNA in conformity with the time and manner specifications of paragraphs (a) through (f) of this section must comply with the requirement in conformity with any applicable time and manner specifications of a jurisdiction in which the offender is required to register.

Example 1. A sex offender convicted in a state does not initially register before release from imprisonment, as required by 34 U.S.C. 20913(b)(1) and paragraph (a)(1) of this section, because the state has no procedure for pre-release registration of sex offenders. Instead, the state informs sex offenders that they must go to a local police station within seven days of release to register. The sex offender must comply with the state's requirements for initial registration, *i.e.,* the offender must report to the police station to register within seven days of release.

Example 2. A sex offender does not register when he is released from custody, or does not register upon entering a jurisdiction to reside as required by 34 U.S.C. 20913(c) and paragraph (c) of this section, because the jurisdiction, at the time, does not register sex offenders based on the offense for which he was convicted. The jurisdiction later sends the sex offender a notice advising that it has extended its registration requirements to include sex offenders like him and directing him to report to a specified agency within 90 days to register. The sex offender must report to the agency to register within the specified timeframe.

Example 3. A sex offender registers as required when released from imprisonment or upon entering a jurisdiction to reside, but the jurisdiction has no procedure for sex offenders to appear periodically in person to update and verify the registration information as required by 34 U.S.C. 20918 and paragraph (b) of this section. The jurisdiction later sends the sex offender a notice advising that it has adopted a periodic verification requirement and directing the sex offender to appear at a designated time and place for an initial update meeting. The sex offender must appear and update the registration as directed.

Example 4. A sex offender does not report his email address to the jurisdiction in which he resides when he initially registers, or within three business days of a change as required by paragraph (e) of this section, because email addresses are not among the information the jurisdiction accepts for inclusion in its registry. The jurisdiction later notifies the sex offender that it has extended the registration information it collects to include email addresses and directs him to send a reply within a specified time that provides his current email address. The sex offender must comply with this direction.

(2) In a prosecution under 18 U.S.C. 2250, paragraph (g)(1) of this section does not in any case relieve a sex offender of the need to establish as an affirmative defense an inability to comply with SORNA because of circumstances beyond his control as

provided in 18 U.S.C. 2250(c) and § 72.8(a)(2).

§ 72.8 Liability for violations.

(a) *Criminal liability*—(1) *Offense.* (i) A sex offender who knowingly fails to register or update a registration as required by SORNA may be liable to criminal penalties under 18 U.S.C. 2250(a).

(ii) A sex offender who knowingly fails to provide information required by SORNA relating to intended travel outside the United States may be liable to criminal penalties under 18 U.S.C. 2250(b).

(iii) As a condition of liability under 18 U.S.C. 2250(a)–(b) for failing to comply with a requirement of SORNA, a sex offender must have been aware of the requirement he is charged with violating, but need not have been aware that the requirement is imposed by SORNA.

(2) *Defense.* A sex offender may have an affirmative defense to liability, as provided in 18 U.S.C. 2250(c), if uncontrollable circumstances prevented the sex offender from complying with SORNA, where the sex offender did not contribute to the creation of those circumstances in reckless disregard of the requirement to comply and complied as soon as the circumstances preventing compliance ceased to exist.

Example 1. A sex offender changes residence from one jurisdiction to another, bringing into play SORNA's requirement to register in each jurisdiction where the sex offender resides and SORNA's requirement to appear in person and report changes of residence within three business days. *See* 34 U.S.C. 20913(a), (c). The sex offender attempts to comply with these requirements by contacting the local sheriff's office, which is responsible for sex offender registration in the destination jurisdiction. The sheriff's office advises that it cannot schedule an appointment for him to register within three business days but that he should come by in a week. The sex offender would have a defense to liability if he appeared at the sheriff's office at the appointed time and registered as required. The sex offender's temporary inability to register and inability to report the change of residence within three business days in the new residence jurisdiction was due to a circumstance beyond his control—the sheriff office's refusal to meet with him until a week had passed—and he complied with the requirement to register as soon as the circumstance preventing compliance ceased to exist.

Example 2. A sex offender cannot register in a state in which he resides because its registration authorities will not register offenders on the basis of the offense for which the sex offender was convicted. The sex offender would have a defense to liability because the state's unwillingness to register sex offenders like him is a circumstance beyond his control. However, if the sex offender failed to register after becoming aware of a change in state policy or practice allowing his registration, the 18 U.S.C. 2250(c) defense would no longer apply, because in such a case the circumstance preventing compliance with the registration requirement would no longer exist.

Example 3. A sex offender needs to travel to a foreign country on short notice—less than 21 days—because of an unforeseeable family or work emergency. The sex offender would have a defense to liability for failing to report the intended travel 21 days in advance, as required by § 72.7(f), because it is impossible to report an intention to travel outside the United States before the intention exists. However, if the sex offender failed to inform the registration jurisdiction (albeit on short notice) once he intended to travel, 18 U.S.C. 2250(c) would not excuse that failure, because the preventing circumstance—absence of an intent to travel abroad—would no longer exist.

(b) *Supervision condition.* For a sex offender convicted of a Federal offense, compliance with SORNA is a mandatory condition of probation, supervised release, and parole. The release of such an offender who does not comply with SORNA may be revoked.

Dated: July 15, 2020.

William P. Barr,

Attorney General.

[FR Doc. 2020–15804 Filed 8–12–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 200723–0200]

RIN 0648–BJ76

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery Off the South Atlantic States; Amendment 11

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 11 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the South Atlantic Region (Shrimp FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This proposed rule would modify the transit provisions for shrimp trawl vessels with penaeid shrimp, *i.e.,* brown, pink, and white shrimp, on board in Federal waters of the South Atlantic that have been closed to shrimp trawling to protect white shrimp as a result of cold weather events. The purpose of this proposed rule is to update the regulations to more closely align with current fishing practices, reduce the socio-economic impacts for fishermen who transit these closed areas, and improve safety at sea while maintaining protection for overwintering white shrimp.

DATES: Written comments must be received on or before September 14, 2020.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2020–0066,'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0066,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Frank Helies, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 11, which includes a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at

https://www.fisheries.noaa.gov/action/amendment-11-shrimp-trawl-transit-provisions/.

FOR FURTHER INFORMATION CONTACT: Frank Helies, telephone: 727–824–5305, or email: *Frank.Helies@noaa.gov.*

SUPPLEMENTARY INFORMATION: The penaeid shrimp fishery of the South Atlantic is managed under the FMP. The FMP was prepared by the Council and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

Amendment 9 to the Shrimp FMP revised the criteria and procedures by which a South Atlantic state may request that NMFS implement a concurrent closure to the harvest of penaeid shrimp (brown, pink, and white shrimp) in the exclusive economic zone (EEZ) when state waters close as a result of severe winter weather (78 FR 35571; June 13, 2013). The Shrimp FMP provides that if a state has determined there is at least an 80-percent reduction in the population of overwintering white shrimp, or that state water temperatures were 9 °C (48 °F) or less for at least 7 consecutive days, the state can request NMFS to close the EEZ adjacent to that state's closed waters to the harvest of penaeid shrimp to protect the white shrimp spawning stock that has been severely depleted by cold weather.

The Shrimp FMP procedures allow a state, after determining that the concurrent closure criteria have been met, to submit a letter directly to the NMFS Regional Administrator (RA) with the request and supporting data for a concurrent closure of penaeid shrimp harvest in the EEZ adjacent to the closed state waters. After a review of the request and supporting information, if the RA determines the recommended closure is in accordance with the procedures and criteria specified in the FMP and the Magnuson-Stevens Act, NMFS would implement the closure through a notification in the **Federal Register**. The closure will usually remain effective until the ending date of the state's closure, but may be ended earlier based upon a request from the state.

Currently, shrimp trawl vessels transiting these EEZ cold weather closed areas with penaeid shrimp on board are required to stow a trawl net with a mesh size of less than 4 inches (10.2 cm) below deck. Since the most recent cold weather EEZ closures off South Carolina (83 FR 2931; January 22, 2018) and Georgia (83 FR 3404; January 25, 2018), fishermen requested that the Council update these transit provisions. Fishermen requested this change to increase their ability to transit the closed areas, as more recent vessel design changes have limited access to below deck storage. Also, requirements for a larger turtle excluder device (TED) in the trawl net to protect leatherback sea turtles have increased the size of a net that would need to be folded and stored below deck. Fishermen also stated that having to disassemble trawl gear for below deck stowage in rough sea conditions is a safety-at-sea concern. Additionally, some fishermen stated that they avoid the closed areas entirely as they were not able to meet the transit requirements.

Amendment 11 and the proposed rule are expected to update the regulations to better match the current design of the vessels in the fishery, reduce the socio-economic impact for fishermen who have difficulty transiting the cold weather closed areas under the current regulations, and improve safety at sea for fishermen through reduced travel time around the closed areas and by not having to disassemble fishing gear in rough weather for stowage below deck, while maintaining protection for overwintering white shrimp and enforceability of the regulations for the cold weather closed areas.

Management Measures Contained in This Proposed Rule

This proposed rule would revise the transit provisions for shrimp trawl vessels with penaeid shrimp on board transiting through cold weather closed areas in Federal waters of the South Atlantic. The proposed rule would allow a vessel to transit South Atlantic cold weather closed areas while possessing penaeid shrimp provided the vessel is in transit and fishing gear is appropriately stowed. Transit would be defined as non-stop progression through the area with fishing gear appropriately stowed. Fishing gear appropriately stowed would be defined as trawl doors are in the rack (cradle) on deck, nets would be in the rigging and tied down, and the try net would be on the deck. Doors in the rack means the trawl doors are stowed in their storage racks out of the water on the vessel's deck. Nets in the rigging means the trawl nets are out of the water and are tied to the trawl vessel's rigging.

The proposed transit provision was developed and recommended to the Council by the Council's Law Enforcement, Shrimp, and Deep-water Shrimp Advisory Panels. Doors in the rack (cradle), nets in the rigging and tied down, and try net on the deck would enable law enforcement on the water or in the air to see from a distance if fishermen are complying with the transit provisions without having to actually board the vessel, thereby saving time and reducing the safety risks associated with a vessel boarding.

The proposed rule would reduce the time needed to stow gear because fishermen would no longer need to disassemble the trawl gear (remove nets from the rigging and the doors) prior to stowing nets with mesh sizes less than 4 inches (10.2 cm) below deck. The proposed rule is expected to reduce adverse socio-economic and safety at sea impacts associated with the current transit provisions through reduced travel time around the closed areas and reduced time on the water for fishermen by not requiring gear stowage below deck.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 11, the Shrimp FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This rule is expected to be an Executive Order 13771 deregulatory action.

The Magnuson-Stevens Act provides the legal basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting and record-keeping requirements are introduced by this proposed rule. Accordingly, the Paperwork Reduction Act does not apply to this proposed rule. A description of this proposed rule, why it is being considered, and the purposes of this proposed rule are contained in the preamble and in the **SUMMARY** section of the preamble. The objectives of this proposed rule are to ensure transit regulations are consistent with current fishing vessel designs, reduce the adverse social and economic effects on commercial shrimp fishing businesses that have not been able to transit closed areas due to an inability to comply with the current transit regulations, improve safety at sea and the enforceability of transit regulations, and maintain protection for over-wintering white shrimp.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if

adopted, will not have a significant economic impact on a substantial number of small entities. A description of the factual basis for this determination follows. All monetary estimates in the following analysis are in 2018 dollars. This proposed rule, if implemented, would allow vessels possessing penaeid shrimp, *i.e.,* brown, white, or pink shrimp, to transit through cold weather closed areas in affected portions of the South Atlantic EEZ provided that the vessel remains in transit, gear is stowed with trawl doors in the rack, and nets in the rigging are tied down with the try net on the deck. Thus, this proposed rule is expected to directly regulate federally permitted vessels in the commercial South Atlantic shrimp fishing industry that harvest penaeid shrimp and transit through cold weather closed areas in affected portions of the South Atlantic EEZ.

Only permitted vessels that harvest penaeid shrimp would be directly regulated by this proposed rule. From 2014 through 2018, the average number of vessels with valid South Atlantic penaeid or rock shrimp permits was 594. From 2014 through 2018, the average number of vessels with valid permits that actively fished (*i.e.,* had landings) in the South Atlantic penaeid shrimp fishery was 262. Because it is not currently feasible to accurately determine affiliations between businesses that possess South Atlantic shrimp permits, for purposes of this analysis it is assumed each of these vessels is independently owned by a single business; however, this assumption likely leads to an overestimate of the actual number of businesses directly regulated by this proposed rule. Thus, this proposed rule is estimated to directly regulate 262 businesses in the commercial South Atlantic shrimp fishing industry, or about 44 percent of the average number of businesses that held valid South Atlantic penaeid or rock shrimp permits from 2014 through 2018.

For vessels with South Atlantic penaeid or rock shrimp permits, annual gross revenue was about $404,810 on average from 2014 through 2018, of which approximately $169,240 (about 42 percent) came from South Atlantic shrimp landings on average. Almost all trips that harvest rock shrimp also harvest penaeid shrimp. Many vessels are also relatively dependent on revenue from other Atlantic fisheries (*e.g.,* scallops and flounder) as well revenue from the Gulf of Mexico shrimp fishery. Based on average economic return estimates from 2011 through 2014, which are the most recent available, net cash flow for these vessels is estimated to be about $61,770 per year on average, and net revenue from commercial fishing operations is estimated to be approximately $35,030 per year on average from 2014 to 2018. The maximum annual gross revenue earned by a single vessel (business) was approximately $2.6 million from 2014 to 2018.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts (revenue) for all businesses primarily engaged in the commercial fishing industry (NAICS code 11411) for RFA compliance purposes only (50 CFR 200.1 and 200.2). In addition to this gross revenue standard, a business primarily involved in commercial fishing is classified as a small business if it is independently owned and operated, and is not dominant in its field of operations (including its affiliates). Based on the information above, all 262 businesses directly regulated by this proposed rule are determined to be small entities for the purpose of this analysis. Therefore, it is determined that this proposed rule will affect a substantial number of small entities.

Under the current regulations, shrimp trawl vessels transiting cold weather closed areas in the EEZ with penaeid shrimp on board are required to stow trawl nets with a mesh size of less than 4 inches (10.2 cm) below deck. Because many vessels are now required to use larger TEDS, they also use larger nets compared to when the current transit regulations were implemented. Shrimp fishermen also typically stow their spare nets on the wheelhouse roof because there is little room below deck to stow their gear.

In addition, cold weather closures are implemented more quickly now than when the transit regulations were initially established. While the reduced time to implement closures has enhanced protection of over-wintering white shrimp, shrimp vessel captains with homeports in states north of Florida can be caught unaware if they are operating off Florida when a closure is implemented. Furthermore, shoals extending into the EEZ off Georgia and South Carolina cause transiting through state waters to be dangerous and increase the risk to the vessel and crew. Thus, traveling back to a vessel's homeport can be risky for shrimp vessels that cannot comply with the current stowage requirements.

Shrimp vessels that have been unable to store fishing gear according to the current transit regulations have been forced to land their shrimp in Florida rather than at their homeport. Based on landings data during the most recent cold weather closures (*i.e.,* January through June of 2018), 33 vessels with homeports in states north of Florida offloaded shrimp in Florida during that time. This proposed rule would make it easier for these vessels to comply with the gear stowage requirements and, as a result, more easily return to their homeport with penaeid shrimp on board.

Although the economic effects of the proposed rule on commercial shrimp vessels cannot be quantified given available data and models, they are expected to be positive. Specifically, if vessels are able to land shrimp at their homeport with their homeport dealer, their profits would potentially increase as a result of expected cost reductions. Shrimp vessels would not incur additional offloading costs if they could offload their shrimp at their homeport dealer, and they would no longer have to absorb the costs of shipping shrimp back to their homeport dealer. Finally, shrimp vessels' fuel costs are expected to decrease as they would no longer need to take longer routes back to their homeports to avoid transiting through the cold water closed areas in the EEZ.

Based on the information above, although a substantial number of small entities would be affected by this proposed rule, this rule would not have a significant economic impact on those entities. Because this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Shrimp, South Atlantic.

Dated: July 24, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.206, revise paragraph (a)(2)(iii) to read as follows:

§ 622.206 Area and seasonal closures.

(a) * * *

(2) * * *

(iii) Brown shrimp, pink shrimp, or white shrimp may be possessed on board a fishing vessel in a closed area, provided the vessel is in transit and that the shrimp fishing gear with trawl nets having a mesh size less than 4 inches (10.2 cm), as measured between the centers of opposite knots when pulled taut, is appropriately stowed. For the purposes of this paragraph (a), transit means a non-stop progression through a closed area and appropriately stowed means trawl doors out of the water and in the rack/cradle on deck, the nets must be out of the water and in the rigging and tied down, and any try net must be on deck.

* * * * *

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Notices

Federal Register

Vol. 85, No. 157

Thursday, August 13, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–52–2020]

Foreign-Trade Zone 38—Spartanburg County, South Carolina; Application for Production Authority; Teijin Carbon Fibers, Inc. (Polyacrylonitrile-Based Carbon Fiber); Greenwood, South Carolina

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the South Carolina State Ports Authority, grantee of FTZ 38, requesting production authority on behalf of Teijin Carbon Fibers, Inc. (TCF), located in Greenwood, South Carolina. The application conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.23) was docketed on August 6, 2020.

The TCF facility (currently under construction, projected to have 90 employees, 440 acres) is located within Site 35 of FTZ 38. The facility is used for the production of polyacrylonitrile-based carbon fiber. In 2019, TCF requested production authority in a notification proceeding (15 CFR 400.22 and 400.37). After an initial review, the requested production authority was approved subject to a restriction requiring that all foreign-status polyacrylonitrile (PAN) fiber admitted for production activity be re-exported (entry for U.S. consumption was not authorized) (see B–38–2019, 84 FR 54837, 10/11/2019).

If the application were approved, on its domestic sales, TCF would be able to choose the duty rate during custom entry procedures that applies to PAN carbon fiber (duty-free) for the foreign-status inputs noted below. TCF would be able to avoid duties on foreign-status PAN fiber which becomes scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

Components and materials sourced from abroad (representing 50–60% of the value of the finished product) include: 12,000 tow PAN fiber (precursor) and 24,000 tow PAN fiber (precursor) (duty rates are 8% and 7.5%, respectively). The request indicates that the PAN fiber is subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

In accordance with the FTZ Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is October 13, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 27, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Diane Finver at *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: August 7, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–17723 Filed 8–12–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–104–2020]

Approval of Subzone Status; Ipswich Shellfish Company, Inc.; Ipswich, Massachusetts

On June 11, 2020, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Massachusetts Port Authority, grantee of FTZ 27, requesting subzone status subject to the existing activation limit of FTZ 27, on behalf of Ipswich Shellfish Company, Inc., in Ipswich, Massachusetts.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (85 FR 36529–36530, June 17, 2020). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 27Q was approved on August 7, 2020, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 27's 129-acre activation limit.

Dated: August 7, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–17724 Filed 8–12–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA350]

Notice of Availability of the Portland Harbor Draft Supplemental Restoration Plan and Environmental Assessment

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

ACTION: Notice of availability; request for comments.

SUMMARY: The Portland Harbor Natural Resource Trustee Council (Trustee Council) has prepared a Draft Supplemental Restoration Plan and Environmental Assessment (Draft SRP/EA). The Draft SRP/EA describes the Trustee Council's preferred restoration alternative to restore natural resources and ecological services injured or lost as a result of releases of hazardous substances and discharges of oil within the Portland Harbor assessment area (applicable to the current phase of restoration, but subject to revision in the future). The Federal Trustees also considered potential environmental impacts of the considered alternatives in

the context of the National Environmental Policy Act (NEPA). The purpose of this notice is to inform the public of the availability of the Draft SRP/EA and to seek public comments on the document.

DATES: Submit comments on or before September 14, 2020.

ADDRESSES: *Obtaining Documents:* You may download the Draft SRP/EA at: *https://www.fws.gov/portlandharbor/sites/default/files/documents/2020-07_DraftSRP-EA_forRelease.pdf.* Alternatively, you may make arrangements to view the document at the following location (subject to any Federal, state, or local public health restrictions associated with the COVID–19 pandemic): Parametrix, 700 NE Multnomah Street, Suite 1000, Portland, OR 97232.

Submitting Comments: You may submit comments on the Draft SRP/EA by one of the following methods:

- *Via the Web:* Email comments to *portlandharbor.nrda@gmail.com* using the comment table available online at: *https://www.fws.gov/portlandharbor/news/draft-supplemental-restoration-plan-available-comment.*
- *Via U.S. Mail:* Lauren Senkyr, NOAA Restoration Center (C/O Parametrix), 700 NE Multnomah Street, Suite. 1000, Portland, OR 97232. Please note that mailed comments must be postmarked on or before the comment deadline of September 14, 2020 to be considered.

FOR FURTHER INFORMATION CONTACT: National Oceanic and Atmospheric Administration—Lauren Senkyr, NOAA Restoration Center, 503–231–2110, *lauren.senkyr@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Since January 2007, the Trustee Council has been conducting a Natural Resource Damage Assessment (NRDA) within the Portland Harbor Assessment Area (PHAA or Portland Harbor). Under the NRDA process, the Trustee Council's overall goal is to restore, rehabilitate, replace, or acquire the equivalent of natural resources and their services that have been injured by contamination within the PHAA and to compensate the public for those losses. One critical part of this process is identifying suitable activities to restore the injured natural resources. In May 2017, the Trustee Council published its Final Portland Harbor Programmatic Environmental Impact Statement and Restoration Plan (Programmatic Restoration Plan) that provided an overall restoration approach: Integrated habitat restoration. The Programmatic Restoration Plan also provided a comprehensive framework for implementing integrated habitat restoration and a broad analysis of the environmental impacts. The Trustee Council has now developed a Draft SRP/EA that uses the criteria identified in the Programmatic Restoration Plan to evaluate and select one of three alternatives to implement restoration actions during the Trustee Council's first phase of restoration. The Trustee Council may revisit its preferred restoration alternatives in future phases of restoration as the ongoing NRDA process continues. The Draft SRP/EA also evaluates potential environmental impacts from the alternatives under the NEPA.

The Trustee Council is conducting the NRDA for Portland Harbor under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Water Act (CWA), and the Oil Pollution Act (OPA). Pursuant to CERCLA, CWA, and OPA, natural resource trustees act on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. CERCLA, CWA, and OPA further instruct the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the time of restoration to baseline (the resource quality and conditions that would exist if the releases of hazardous substances and discharges of oil had not occurred) is complete.

The Portland Harbor Trustee Council members are as follows:

- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of the Interior (DOI);
- State of Oregon, acting through the Oregon Department of Fish and Wildlife;
- Confederated Tribes of the Grand Ronde Community of Oregon;
- Confederated Tribes of Siletz Indians;
- Confederated Tribes of the Umatilla Indian Reservation;
- Confederated Tribes of the Warm Springs Reservation of Oregon; and
- Nez Perce Tribe.

This restoration planning activity is proceeding in accordance with the Programmatic Restoration Plan. Information on the site background, phased approach to the NRDA, restoration concepts considered in the Draft SRP/EA, and the criteria against which project ideas are evaluated can be viewed in the Programmatic Restoration Plan (*https://www.fws.gov/portlandharbor/sites/default/files/2018-12/201706_FINAL_PEIS.pdf*) and its appendices (*https://www.fws.gov/portlandharbor/sites/default/files/2018-12/201706_FINAL_PEIS_Appendix.pdf*).

Site Background

Since the 1900s, industrial facilities along the Willamette River at Portland Harbor have released an array of hazardous substances and discharged oil into the river system. In December 2000, the Environmental Protection Agency (EPA) listed Portland Harbor on the National Priorities List due to elevated concentrations of contaminants. Two months later, the Portland Harbor Natural Resource Trustees entered into an intergovernmental memorandum of understanding with the EPA and the Oregon Department of Environmental Quality (DEQ) to coordinate efforts at the Portland Harbor Superfund Site. In 2002, the Natural Resource Trustees established the Trustee Council. The restoration activities discussed in the Trustee Council's 2017 Programmatic Restoration Plan and the current Draft SRP/EA are associated with the Trustee Council's ongoing NRDA.

Overview of the Draft SRP/EA

In the Programmatic Restoration Plan, the Trustee Council described the following three ways that a potentially responsible party (PRP) could provide restoration to resolve its liability for damages at Portland Harbor:

- Trustee-Led Project Alternative—The Trustee Council would use settlement funds to design and construct a restoration project;
- Partnering Project Alternative—The Trustee Council would provide settlement funds to a third-party entity to develop and implement a restoration project; and
- Restoration Bank Credit Alternative—The Trustee Council or a PRP would purchase ecological benefits, in the form of credits, from a restoration bank.

At the time the Programmatic Restoration Plan was published, it would have been premature for the Trustee Council to evaluate specific actions under these three alternatives. The Trustee Council anticipates that it will soon be in a position to begin its first phase of restoration implementation. In January 2020, the Trustee Council published a Request for Proposals (RFP) for ecological

restoration projects that outlined the eligibility and evaluation criteria that would be used to select specific restoration actions that could be implemented in the first phase of restoration implementation. Now, having received responses to the RFP, and with the prospect of potential natural resource damages settlements in the near future, the Trustee Council is preparing to implement restoration actions.

After evaluating the projects submitted in response to the RFP, the Trustee Council has identified the Restoration Bank Credit Alternative as the Preferred Alternative. Five restoration bank projects were determined to be eligible under the Preferred Alternative.

Next Steps

The public is encouraged to review and comment on the Draft SRP/EA. After the close of the public comment period, the Trustee Council will consider and address the comments received before issuing a Final SRP/EA. A summary of comments received and the Trustee Council's responses will be included in the final document.

Invitation to Comment

The Trustee Council seeks public review and comment on the Draft SRP/EA (see **ADDRESSES** above). Before including your address, telephone number, email address, or other personally identifiable information in your comment, please be aware that your entire comment, including your personally identifiable information, will become part of the public record.

The Trustee Council will conduct a virtual public meeting on Tuesday, September 1, 2020 beginning at 6 p.m. Pacific Time to provide information and answer questions. Information on how to attend the virtual meeting is available at *https://www.fws.gov/portlandharbor/news/draft-supplemental-restoration-plan-available-comment.*

Administrative Record

The documents comprising the Administrative Record for the Draft SRP/EA can be viewed electronically at *https://www.diver.orr.noaa.gov/web/guest/portland-harbor-admin-record.*

Authority

The authority for this action is the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*) and its implementing Natural Resource Damage Assessment Regulations found at 43 CFR part 11, the Clean Water Act (33 U.S.C. 1251 *et seq.*), the Oil Pollution Act (33 U.S.C. 2701 *et seq.*), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Dated: August 7, 2020.

Carrie Selberg,

Director, Office of Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 2020–17679 Filed 8–12–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0131]

Agency Information Collection Activities; Comment Request; Department of Education Green Ribbon Schools Nominee Presentation Form

AGENCY: Office of Communications and Outreach (OCO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension to an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 13, 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–0131. 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 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrea Falken, 202–503–8985.

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: U.S. Department of Education Green Ribbon Schools Nominee Presentation Form.

OMB Control Number: 1860–0509.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Organizations.

Total Estimated Number of Annual Responses: 90.

Total Estimated Number of Annual Burden Hours: 22.

Abstract: The U.S. Department of Education Green Ribbon Schools (ED–GRS) is a recognition award that honors schools, districts, and postsecondary institutions that are making great strides in three Pillars: (1) Reducing environmental impact and costs, including waste, water, energy use, and transportation; (2) improving the health and wellness of students and staff, including environmental health of premises, nutrition, and fitness; and (3) providing effective sustainability education, including STEM, civic skills, and green career pathways.

ED collects information on nominees from state nominating authorities regarding their schools, districts, and postsecondary nominees. The recognition award is part of a U.S. Department of Education (ED) effort to

identify and communicate practices that result in improved student engagement, academic achievement, graduation rates, and workforce preparedness, and reinforce federal efforts to increase energy independence and economic security.

Dated: August 10, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–17697 Filed 8–12–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Service Contract Inventory for Fiscal Years (FY) 2017 and 2018

AGENCY: Office of Finance and Operations, Department of Education.

ACTION: Notice of availability—FY 2017 and FY 2018 service contract inventory.

SUMMARY: Through this notice, the Secretary announces the availability of the Department of Education's service contract inventory for FY 2017 and FY 2018 on its website, at *www2.ed.gov/fund/data/report/contracts/servicecontractinventoryappendix/servicecontractinventory.html.* A service contract inventory is a tool for assisting the agency in better understanding how contracted services are being used to support mission and operations and whether the contractors' skills are being utilized in an appropriate manner.

FOR FURTHER INFORMATION CONTACT: April Bolton-Smith, U.S. Department of Education, Office of Finance and Operations, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 245–6345. Email: *April.Bolton-Smith@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 743 of Division C of the Consolidated Appropriations Act of 2010, Public Law 111–117, requires civilian agencies, other than the Department of Defense, that are required to submit an inventory in accordance with the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270, 31 U.S.C. 501 note) to submit their inventories to the Office of Federal Procurement Policy in the Office of Management and Budget. In addition, section 743 requires these agencies, which include the Department of Education, to (1) make the inventory available to the public, and (2) publish in the **Federal Register** a notice announcing that the inventory is available to the public along with the name, telephone number, and email address of the agency point of contact.

Through this notice, the Department announces the availability of its inventory for FY 2017 and FY 2018 on the following website: *www2.ed.gov/fund/data/report/contracts/servicecontractinventoryappendix/servicecontractinventory.html.* The point of contact is provided under **FOR FURTHER INFORMATION CONTACT**.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the 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.

Denise Carter,

Acting Assistant Secretary, Office of Finance and Operations.

[FR Doc. 2020–17739 Filed 8–12–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2020–SCC–0132]

Agency Information Collection Activities; Comment Request; Report of the Randolph-Sheppard Vending Facility Program

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension to an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 13, 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–0132. 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 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Christine Grassman, 202–245–6973.

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: Report of the Randolph-Sheppard Vending Facility Program.

OMB Control Number: 1820–0009.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Organizations.

Total Estimated Number of Annual Responses: 51.

Total Estimated Number of Annual Burden Hours: 689.

Abstract: The licensing and operation of vending facilities by blind vendors under the Act is supported by a combination of VR program funds, state appropriations, Federal vending machine income, and levied set asides from vendors. It provides persons who are blind with remunerative employment and self-support through the operation of vending facilities on Federal and other property. The program recruits qualified individuals who are blind, trains them on the management and operation of small business enterprises, and then licenses qualified blind vendors to operate the facilities. As required by 20 U.S.C. 107a(6)(a), the Secretary of Education, through the Commissioner of the Rehabilitation Services Administration (RSA), conducts periodic evaluations of the programs authorized under the Act. In addition, section 107b(4) requires entities designated as the SLA to make such reports in such form and containing such information as the Secretary may from time to time require. The information to be collected is a necessary component of the evaluation process and forms the basis for annual reporting to the Department. The data are also used to understand the distribution type and profitability of vending facilities throughout the country. Such information is useful in providing technical assistance to SLAs and property managers and in monitoring the implementation of the program. The Code of Federal Regulations, at 34 CFR 395.8, specifies that vending machine income received by the state from Federal property managers can be distributed to blind vendors in an amount not to exceed the national average income for blind vendors. This amount is determined through data collected by the RSA–15: Report of Randolph-Sheppard Vending Facility Program. In addition, the collection of information ensures the provision and transparency of activities referenced in 34 CFR 395.12 related to disclosure of program and financial information and assists with the requirement in 34 CFR 395.11 regarding the provision of training.

Dated: August 10, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–17715 Filed 8–12–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2618–000]

Thordin ApS; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Thordin ApS's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 26, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–17675 Filed 8–12–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: ER10–1285–009.

Applicants: Craven County Wood Energy Limited Partnership.

Description: Notice of Non-Material Change in Status of Craven County Wood Energy Limited Partnership.

Filed Date: 8/6/20.

Accession Number: 20200806–5130.

Comments Due: 5 p.m. ET 8/27/20.

Docket Numbers: ER10–2645–004.

Applicants: Baconton Power LLC.

Description: Notice of Non-Material Change in Status of Baconton Power LLC.

Filed Date: 8/5/20.

Accession Number: 20200805–5162.

Comments Due: 5 p.m. ET 8/26/20.

Docket Numbers: ER20–57–002; ER20–339–002; ER20–58–002; ER19–115–002; ER20–59–002; ER20–27–002; ER16–2019–003; ER17–1607–002;

ER17–1608–002; ER17–318–003; ER16–2520–003; ER19–8–003; ER19–119–003; ER19–2476–003; ER20–1799–001; ER20–1800–001; ER20–1801–002; ER18–97–002; ER20–422–002.

Applicants: GA Solar 3, LLC, Twiggs County Solar, LLC, FL Solar 1, LLC, FL Solar 4, LLC, FL Solar 5, LLC, AZ Solar 1, LLC, Wright Solar Park LLC, Five Points Solar Park LLC, Sunray Energy 2, LLC, Sunray Energy 3 LLC, Three Peaks Power, LLC, Grand View PV Solar Two LLC, Sweetwater Solar, LLC, Techren Solar I LLC, Techren Solar II LLC, Techren Solar III LLC, Techren Solar IV LLC, Techren Solar V LLC, MS Solar 3, LLC.

Description: Supplement to June 2, 2020 Notice of Non-Material Change in Status of GA Solar 3, LLC, et. al.

Filed Date: 7/20/20.

Accession Number: 20200720–5039.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: ER20–2032–001.

Applicants: Hardin Wind LLC.

Description: Tariff Amendment: Response to Commission Staff Request Regarding Application for Market-Based Rate to be effective 8/10/2020.

Filed Date: 8/5/20.

Accession Number: 20200805–5140.

Comments Due: 5 p.m. ET 8/26/20.

Docket Numbers: ER20–2617–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2020–08–06 Settlement Timeline Tariff Amendment to be effective 1/1/2021.

Filed Date: 8/6/20.

Accession Number: 20200806–5001.

Comments Due: 5 p.m. ET 8/27/20.

Docket Numbers: ER20–2618–000.

Applicants: Thordin ApS.

Description: Baseline eTariff Filing: Baseline Aug 2020 to be effective 8/10/2020.

Filed Date: 8/6/20.

Accession Number: 20200806–5010.

Comments Due: 5 p.m. ET 8/27/20.

Docket Numbers: ER20–2619–000.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: § 205(d) Rate Filing: 2020–08–06_Revisions to Attachment FF–ATCLLC to Align with Cost Allocation to be effective 10/6/2020.

Filed Date: 8/6/20.

Accession Number: 20200806–5051.

Comments Due: 5 p.m. ET 8/27/20.

Docket Numbers: ER20–2620–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: DSA Hecate Energy Desert Storage 1 LLC SA No. 1113 to be effective 10/6/2020.

Filed Date: 8/6/20.

Accession Number: 20200806–5081.

Comments Due: 5 p.m. ET 8/27/20.

Docket Numbers: ER20–2621–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–08–06_Attachment X GIA Section 9.7.3 Inverter Based Resources to be effective 10/6/2020.

Filed Date: 8/6/20.

Accession Number: 20200806–5085.

Comments Due: 5 p.m. ET 8/27/20.

Docket Numbers: ER20–2622–000.

Applicants: Wilmot Energy Center, LLC.

Description: Baseline eTariff Filing: Wilmot Energy Center, LLC Application for MBR Authority to be effective 10/5/2020.

Filed Date: 8/6/20.

Accession Number: 20200806–5093.

Comments Due: 5 p.m. ET 8/27/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: August 6, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–17713 Filed 8–12–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: ER10–1285–009.

Applicants: Craven County Wood Energy Limited Partnership.

Description: Notice of Non-Material Change in Status of Craven County Wood Energy Limited Partnership.

Filed Date: 8/6/20.

Accession Number: 20200806–5130.

Comments Due: 5 p.m. ET 8/27/20.

Docket Numbers: ER10–2645–004.

Applicants: Baconton Power LLC.

Description: Notice of Non-Material Change in Status of Baconton Power LLC.

Filed Date: 8/5/20.

Accession Number: 20200805–5162.

Comments Due: 5 p.m. ET 8/26/20.

Docket Numbers: ER20–57–002; ER20–339–002; ER20–58–002; ER19–115–002; ER20–59–002; ER20–27–002; ER16–2019–003; ER17–1607–002; ER17–1608–002; ER17–318–003; ER16–2520–003; ER19–8–003; ER19–119–003; ER19–2476–003; ER20–1799–001; ER20–1800–001; ER20–1801–002; ER18–97–002; ER20–422–002.

Applicants: GA Solar 3, LLC, Twiggs County Solar, LLC, FL Solar 1, LLC, FL Solar 4, LLC, FL Solar 5, LLC, AZ Solar 1, LLC, Wright Solar Park LLC, Five Points Solar Park LLC, Sunray Energy 2, LLC, Sunray Energy 3 LLC, Three Peaks Power, LLC, Grand View PV Solar Two LLC, Sweetwater Solar, LLC, Techren Solar I LLC, Techren Solar II LLC, Techren Solar III LLC, Techren Solar IV LLC, Techren Solar V LLC, MS Solar 3, LLC.

Description: Supplement to June 2, 2020 Notice of Non-Material Change in Status of GA Solar 3, LLC, et. al.

Filed Date: 7/20/20.

Accession Number: 20200720–5039.

Comments Due: 5 p.m. ET 8/10/20.

Docket Numbers: ER20–2032–001.

Applicants: Hardin Wind LLC.

Description: Tariff Amendment: Response to Commission Staff Request Regarding Application for Market-Based Rate to be effective 8/10/2020.

Filed Date: 8/5/20.

Accession Number: 20200805–5140.

Comments Due: 5 p.m. ET 8/26/20.

Docket Numbers: ER20–2617–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2020–08–06 Settlement Timeline Tariff Amendment to be effective 1/1/2021.

Filed Date: 8/6/20.

Accession Number: 20200806–5001.

Comments Due: 5 p.m. ET 8/27/20.

Docket Numbers: ER20–2618–000.

Applicants: Thordin ApS.

Description: Baseline eTariff Filing: Baseline Aug 2020 to be effective 8/10/2020.

Filed Date: 8/6/20.

Accession Number: 20200806–5010.

Comments Due: 5 p.m. ET 8/27/20.

Docket Numbers: ER20–2619–000.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: § 205(d) Rate Filing: 2020–08–06_Revisions to Attachment FF–ATCLLC to Align with Cost Allocation to be effective 10/6/2020.

Filed Date: 8/6/20.

Accession Number: 20200806–5051.

Comments Due: 5 p.m. ET 8/27/20.

Docket Numbers: ER20–2620–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: DSA Hecate Energy Desert Storage 1 LLC SA No. 1113 to be effective 10/6/2020.

Filed Date: 8/6/20.

Accession Number: 20200806–5081.

Comments Due: 5 p.m. ET 8/27/20.

Docket Numbers: ER20–2621–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2020–08–06_Attachment X GIA Section 9.7.3 Inverter Based Resources to be effective 10/6/2020.

Filed Date: 8/6/20.

Accession Number: 20200806–5085.

Comments Due: 5 p.m. ET 8/27/20.

Docket Numbers: ER20–2622–000.

Applicants: Wilmot Energy Center, LLC.

Description: Baseline eTariff Filing: Wilmot Energy Center, LLC Application for MBR Authority to be effective 10/5/2020.

Filed Date: 8/6/20.

Accession Number: 20200806–5093.

Comments Due: 5 p.m. ET 8/27/20.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by 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: August 6, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–17676 Filed 8–12–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2618–000]

Thordin ApS; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Thordin ApS's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 26, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: August 6, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–17712 Filed 8–12–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0360; FRL–10012–55]

Lambda-Cyhalothrin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the California Department of Pesticide Regulation to use the pesticide lambda-cyhalothrin (CAS No. 91465–08–6) to treat up to 3,000 acres of asparagus to control the European asparagus aphid. The applicant proposes a use which is supported by the Interregional (IR)–4 program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. EPA is soliciting public comment before making the decision whether to grant the exemption.

DATES: Comments must be received on or before August 28, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2020–0360, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or

delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The California Department of Pesticide Regulation (CDPR) has requested the EPA Administrator to issue a specific exemption for the use of lambda-cyhalothrin on asparagus to control the European asparagus aphid (EAA). Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that growers are reporting increased pressure from EAA, and with chlorpyrifos banned for use in California, there is no efficacious product to control this pest. CDPR states that uncontrolled EAA infestations will cause significant plant stand reduction and lower asparagus yields, which could threaten the viability of the California asparagus industry if the emergency pest situation is not addressed.

The Applicant proposes to make no more than 2 applications at a maximum rate of 0.03 fluid ounces per acre of lambda-cyhalothrin, on up to 3,000 acres of asparagus grown in the California counties of Colusa, Kern, Merced, Monterey, San Joaquin and Solano from August 1 to October 31, 2020. Treatment of the maximum acreage at the maximum rate would result in a total use of 180 fluid ounces of lambda-cyhalothrin (90 gallons of formulated product).

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use which is supported by the Inter-Regional Project Number 4 (IR–4) program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. The notice provides an opportunity for public comment on the application. The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the CDPR, as well as any subsequent specific exemption applications submitted by other state lead agencies.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 29, 2020.

Catherine Aubee,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2020–17734 Filed 8–12–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0273; FRL–10010–43]

Agency Information Collection Activities; Proposed Consolidation of Several Existing Collections (EPA ICR No. 2624.01); Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit a request to renew and consolidate several existing approved Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the consolidated ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The consolidated ICR is entitled: ''Consolidated Pesticide Registration Activities'' and identified by EPA ICR No. 2624.01 and OMB Control No. 2070–NEW. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before October 13, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2020–0273, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Carolyn Siu, Field and External Affairs Division, 7650P, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0159; email address: *siu.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates 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.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Submit your comments by the deadline identified under **DATES**.

6. Identify the docket ID number assigned to the ICR in the subject line on the first page of your response. You may also provide the ICR title and related EPA and OMB numbers.

III. What do I need to know about PRA?

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information subject to PRA approval unless it displays a currently valid OMB control number. The OMB control numbers for the EPA regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the preamble of the final rule, are further displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instruments or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in a list at 40 CFR 9.1.

As used in the PRA context, burden is defined in 5 CFR 1320.3(b).

IV. What ICR does this request apply to?

Title: Consolidated Pesticide Registration Activities.

ICR number: EPA ICR No. 2624.01.

OMB control number: OMB Control No. 2070–NEW.

ICR status: This ICR reflects the consolidation of the following currently approved ICRs:

• ''Tolerance Petitions for Pesticides on Food/Feed Crops and New Inert Ingredients,'' EPA ICR No. 0597.13, OMB Control No. 2070–0024, scheduled to expire April 30, 2022;

• ''Submission of Unreasonable Adverse Effects Information Under FIFRA 6(a)(2),'' EPA ICR No. 1204.14, OMB Control No. 2070–0039, scheduled to expire on February 28, 2021;

• ''Experimental Use Permits (EUPs) for Pesticides,'' EPA ICR No. 0276.17, OMB Control No. 2070–0040, scheduled to expire on February 28, 2021;

• ''Notice of Supplemental Distribution of a Registered Pesticide Product,'' EPA ICR No. 0278.13, OMB Control No. 2070–0044, scheduled to expire on October 31, 2021;

• ''Compliance Requirement for Child Resistant Packaging,'' EPA ICR No. 0616.13, OMB Control No. 2070–0052, scheduled to expire on November 30, 2021;

• ''Application for New and Amended Pesticide Registration,'' EPA ICR No. 0277.21, OMB Control No. 2070–0060, scheduled to expire on September 30, 2020;

• ''Plant-Incorporated Protectants; CBI Substantiation and Adverse Effects Reporting,'' EPA ICR No. 1693.10, OMB Control No. 2070–0142, scheduled to expire on February 28, 2021;

• ''Pesticide Program Public Sector Collections (FIFRA § 18/24(c)),'' EPA ICR No. 2311.04, OMB Control No. 2070–0182, scheduled to expire on February 28, 2021.

Abstract: This is a new information collection request (ICR) that consolidates the collection activities covered by eight ICRs that are currently approved by the Office of Management and Budget (OMB) under the separate OMB control numbers identified in the previous paragraph. This consolidation is due to the shared collection method or anticipated collection method of the information via the Pesticide Submission Portal in EPA's Central Data Exchange (CDX) and fulfills OMB Terms of Clearance on several of the ICRs. This consolidation is expected to clarify the capabilities of the Pesticide Submission Portal for respondents as well as streamline EPA's ICR tracking, renewal, and development process.

The eight consolidated ICRs enable the EPA to acquire the necessary data to support the statutorily mandated information collection activities pertaining to the pesticide registration process under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act (FQPA), specifically:

• Pesticide registration.
• Pesticide use.
• Pesticide sale and distribution.
• Pesticide permitting activities.

• Determinations regarding whether a product must be regulated under FIFRA.

• Pesticide tolerances.

The collection activities vary and are dependent on the request from the Agency, respondent or both to fulfill the associated requirement or voluntary submission. Due to the diverse nature of the collections and affected industries, the term ''respondent'' will be used to refer to those engaging in any or all of the collections described in this ICR, unless a specific term offers more clarity.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average between 0.32–1,739 hours per response. The consolidated ICR, a copy of which is available in the docket, provides a detailed explanation of this estimate, which is only briefly summarized here:

Respondents/Affected entities: Entities potentially affected by this ICR include pesticide and other agricultural chemical manufacturing, research and development in the physical, engineering, and life sciences, biological products (except diagnostic) manufacturing, colleges, universities, and professional schools, farm supplies wholesalers, flower, nursery stock, and florists' supplies wholesalers, state government, other chemical and allied products merchant wholesalers, exterminating and pest control service, management, scientific, and technical consulting services.

Estimated total number of potential respondents: 136,168.

Frequency of response: On occasion.

Estimated total annual burden hours: 2,179,699.

Estimated total annual costs: $174,892,655. This includes an estimated burden cost of $174,892,655 and an estimated cost of $0 for non-burden hour paperwork costs, *e.g.,* capital investment or maintenance and operational costs.

V. Are there changes in the estimates from the last approvals?

The EPA estimates no quantifiable change in burden hours between the combined burden in this ICR and the burden estimates in the previously approved requests.

VI. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the consolidated ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity for the public to submit additional comments for OMB consideration.

If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: August 7, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2020–17701 Filed 8–12–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0433; FRL–10012–79]

Cuprous Iodide; Draft Ecological Risk Assessment for Federally Listed Species; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is announcing the availability of and soliciting public comment on EPA's draft Ecological Risk Assessment for Federally Listed Species for the antimicrobial pesticide, cuprous iodide.

DATES: Comments must be received on or before September 14, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2013–0433, through the *Federal eRulemaking Portal at http://www.regulations.gov.* Please follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Jacqueline Hardy, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 308–6416; email address: *hardy.jacqueline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including those with environmental and human health interests; the chemical industry, pesticide users; and members of the public interested in the sale, distribution, or use of articles that may be fabricated with this pesticide and/or potential impacts of this pesticide's use on threatened or endangered (listed) species and designated critical habitats. Since others may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets#tips.*

II. What action is the Agency taking?

A. Authority

The Endangered Species Act (ESA) requires federal agencies, such as EPA, to ensure that their actions are not likely to jeopardize the continued existence of species listed as threatened or endangered under the ESA or destroy or adversely modify the designated critical habitat of such species. The registration of a pesticide containing a new active ingredient under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) constitutes an EPA ''action'' under the ESA. If EPA

determines a pesticide may affect a listed species or its designated critical habitat, EPA must initiate consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (collectively referred to as the Service), as appropriate.

B. Background

Cupron Cuprous Iodide Masterbatch (EPA Reg. No. 84542–9) containing the new active ingredient, cuprous iodide, was registered October 6, 2015. Cuprous Iodide Masterbatch is a material preservative that is incorporated into manufactured products to suppress the growth of algae, mold, mildew, fungi, and bacteria which may cause unpleasant odors, discoloration, staining, deterioration, or corrosion. This product is mixed with a compatible polymer used to create fibers, plastics, and films. Cuprous iodide is incorporated at a rate not exceed 5.0% by weight and is evenly distributed throughout the final article. The Cupron Cuprous Iodide Masterbatch label allows a myriad of uses including but not limited to bedding, apparel, outerwear, undergarments, hosiery, carpets, plastic composites, floor coverings, carpet, draperies, upholstery, plumbing supplies, tiles, wallboard, shoes, sails, and awnings. As the cuprous iodide is expected to be tightly bound within the polymer matrices, environmental exposure to cuprous iodide from these uses is extremely limited and is not reasonably expected to reach concentrations high enough to cause any discernible effects.

On March 4, 2019, the Center of Biological Diversity (CBD) filed a lawsuit against the Agency alleging that EPA violated the ESA by failing to ensure that the registration of Cupron Cuprous Iodide Masterbatch would not jeopardize any listed species or destroy or modify their critical habitat, and by failing to consult with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service as required under the ESA.

The primary pathway by which cuprous iodide would be expected to be released to the aquatic environment is from down-the-drain discharges by leaching during in-service use of manufactured products via fabric washing at institutional facilities, commercial establishments, and residences. In order to facilitate settlement of the lawsuit, Cupron submitted a label amendment removing from its label approved uses in articles that could be frequently washed such as bedding, mattress covers, apparel, outerwear, undergarments, and hosiery.

The Agency conducted an ecological risk assessment for federally listed species for cuprous iodide for the subset of uses that would remain on the revised label. The proposed label includes uses for fibers (fiberfill for quilts and pillows, vacuum cleaner bags, sleeping bags, brush bristles, air and dust filters, book covers, carpets, rugs, mats, carpet underlay, carpet backing, broadloom and tile carpeting, conveyor belts that do not come in contact with any type of food, automotive and truck upholstery, automotive and truck carpeting and interior liners, shoes, gloves and helmets, sails, ropes, canvas, ducking, awnings, umbrellas) and for plastics and films (automotive and vehicular parts, brush handles, building materials and components (excluding shingles), wood composites, non-food contact plastic composites, conveyor belts that do not come in contact with any type of food, floor covering, flooring, footwear including boots, furniture, gaskets, glazing for cement tile and for toilets, indoor furniture, insulation for wire and cable, insulators, kitchen and bathroom hardware, plumbing supplies and fixtures including sinks, indoor sports equipment, tape, tiles, tubing, vacuum cleaner bags, wallboard, walls, waste containers, personal hygiene devices such as combs, brushes, and hairclips). The Cupron Cuprous Iodide Masterbatch label would specify that it may not be used as a coating, film, or laminate on any other product than those listed on the label.

The draft ecological risk assessment for federally listed species for cuprous iodide shows that the potential exposures to terrestrial and aquatic organisms (including listed species) from cuprous iodide are not reasonably expected to occur at levels that would result in a discernible effect from the uses that would be allowed on the revised Cupron Cuprous Iodide Masterbatch label. The Agency proposes to make a No Effects (NE) determination for all Federally-listed-threatened/endangered species and critical habitats for the narrowed set of uses of cuprous iodide that would be allowed under the proposed label amendments.

C. Public Comments Sought

After reviewing public comments on the draft ecological risk assessment for federally listed species for cuprous iodide, EPA will issue, if necessary, a revised ecological risk assessment and a response to comments document before amending the registration. If EPA determines that this set of pesticide uses may affect listed species and/or their designated critical habitat, EPA will initiate consultation with the Services, as appropriate.

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 7, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2020–17702 Filed 8–12–20; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of a modified system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is hereby given that the Farm Credit Administration (FCA or Agency) is amending an existing system of records, FCA–13—Correspondence Files—FCA. The Correspondence Files—FCA system is used to track incoming and outgoing correspondence and to draft correspondence and other memoranda. The Agency is updating the notice to include more details in the categories of individuals and categories of records in the system, and to make administrative updates and non-substantive changes to conform to the SORN template requirements prescribed in the Office of Management and Budget (OMB) Circular No. A–108.

DATES: You may send written comments on or before September 14, 2020. FCA filed an amended System Report with Congress and the Office of Management and Budget on May 29, 2020. This notice will become effective without further publication on September 22, 2020 unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency, commenters are encouraged to submit comments by email or through the FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov.*
- *FCA Website: http://www.fca.gov.* Click inside the ''I want to . . .'' field,

near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.

• *Mail:* David Grahn, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our website at *http://www.fca.gov.* Once you are in the website, click inside the ''I want to . . .'' field, near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page, where you can select the SORN for which you would like to read public comments. The comments will be posted as submitted but, for technical reasons, items such as logos and special characters may be omitted. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FOR FURTHER INFORMATION CONTACT: Autumn R. Agans, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4019.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 that agencies publish a system of records notice in the **Federal Register** when there is a revision, change, or addition to the system of records. The substantive changes and modifications to the currently published version of FCA–13—Correspondence Files—FCA include:

1. Identifying the records in the system as unclassified.
2. Updating the system location to reflect the system's current location.
3. Updating the system managers to reflect the system's current owner.
4. Expanding and clarifying the categories of individuals and categories of records to ensure they are consistent with the intended purpose for which the records are collected.
5. Clarifying the record source categories.
6. Revising the retention and disposal section to reflect updated guidance from the National Archives and Records Administration.
7. Revising the safeguards section to reflect updated cybersecurity guidance and practices.

Additionally, non-substantive changes have been made to the notice to align with the latest guidance from OMB.

The amended system of records is: FCA–13—Correspondence Files—FCA. As required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, FCA sent notice of this proposed system of records to the Office of Management and Budget, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate. The notice is published in its entirety below.

SYSTEM NAME AND NUMBER:

FCA–13—Correspondence Files—FCA.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Congressional and Public Affairs, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

SYSTEM MANAGER:

Director, Office of Congressional and Public Affairs, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252.

PURPOSES OF THE SYSTEM:

We use information in this system of records to track incoming and outgoing correspondence and to draft correspondence and other memoranda.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have correspondence with FCA and the Farm Credit System Insurance Corporation (FCSIC) and current and former FCA and FCSIC employees assigned to process review and/or respond to the correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains incoming and outgoing correspondence and internal reports and memoranda, which are part of a general correspondence file maintained by the office(s) involved. Additionally, information about the correspondence is captured, including, but not limited to: (1) The type of correspondence (letter, fax, email); (2) dates and times received or sent; (3) name and office of FCA or FCSIC employee assigned to the correspondence; and (4) basic contact information (name, address, email address, phone number) related to the correspondence.

RECORD SOURCE CATEGORIES:

Persons corresponding with FCA and FCISC and FCA and FCSIC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses'' (64 FR 8175).

DISCLOSURE TO CONSUMER REPORTING AGENCIES: NONE.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in file folders and on a computerized database.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name.

POLICIES AND PROCEDURES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained in accordance with the National Archives and Records Administration's General Records Schedule, and with the FCA Comprehensive Records Schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

FCA implements multiple layers of security to ensure access to records is limited to those with a need-to-know in support of their official duties. Records are physically safeguarded in a secured environment using locked file rooms, file cabinets, or locked offices and other physical safeguards. Computerized records are safeguarded through use of user roles, passwords, firewalls, encryption, and other information technology security measures. Only personnel with a need-to-know in support of their duties have access to the records.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

NOTIFICATION PROCEDURE:

Address inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, McLean, VA 22102–5090.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Federal Register Vol. 64, No. 100/ Tuesday, May 25, 1999 page 21875.

Vol. 70, No. 183/Thursday, September 22, 2005, page 55621.

Dated: August 10, 2020.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2020–17737 Filed 8–12–20; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS20–08]

Appraisal Subcommittee; Order Extending Commercial Real Estate Transaction Temporary Waiver Relief

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Order extending, with specified terms and conditions, commercial real estate transaction temporary waiver relief.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council (FFIEC), with approval of the FFIEC, is issuing an Order pursuant to section 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (Title XI) and the rules promulgated thereunder, extending temporary waiver relief of appraiser credentialing requirements for appraisals of federally related transactions (FRTs) under $1,000,000 for commercial real estate transactions throughout the State of North Dakota for an additional one-year period and subject to specified terms and conditions.

DATES: Applicable August 7, 2020.

FOR FURTHER INFORMATION CONTACT: James R. Park, Executive Director, at (202) 595–7575, or Alice M. Ritter, General Counsel, at (202) 595–7577, ASC, 1325 G Street NW, Suite 500, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: Section 1119(b) of Title XI authorizes the ASC to waive, on a temporary basis and subject to the approval of the FFIEC, ''any requirement relating to certification or licensing of a person to perform appraisals under [Title XI]'' upon ''a written determination that there is a scarcity of certified or licensed appraisers to perform appraisals in connection with [FRTs] [1] in a State, or in any geographical political subdivision of a State, leading to significant delays in the performance of such appraisals.'' [2] The ASC has promulgated regulations that set forth procedures [3] that govern the processing of temporary waiver requests.

On August 1, 2018, the Governor of North Dakota, the North Dakota Department of Financial Institutions, and the North Dakota Bankers Association (Requesters) submitted a temporary waiver request to the ASC. The Requesters sought a temporary waiver of not less than five years of appraiser credentialing requirements for appraisals for FRTs under $500,000 for 1-to-4 family residential real estate transactions and under $1,000,000 for agricultural and commercial real estate transactions throughout the State of North Dakota.[4]

On July 9, 2019, the ASC convened a Special Meeting to consider the request. Based on the information provided by the Requester, the North Dakota Real Estate Appraiser Qualifications and Ethics Board (Appraiser Board), and by the public through comment letter submissions, the ASC issued an Order (2019 Order) approving a limited version of the waiver request.[5] The 2019 Order was published in the **Federal Register**,[6] and in pertinent part [7] included a temporary waiver of appraiser credentialing requirements for appraisals of FRTs under $1,000,000 for commercial real estate transactions throughout the State of North Dakota for a period of one year. The 2019 Order also provided that, among other things, the parties requesting the waiver should submit certain information to the ASC at least 30 days prior to the expiration of the one-year period and the ASC would consider the information submitted and by vote in open session may extend the temporary waiver for an additional one-year period.

On July 6, 2020, Requesters submitted certain information and as amended on July 8, 2020, sought extension of the commercial real estate transaction temporary waiver relief for an additional one-year period.[8] On July 29, 2020, the ASC convened a Special Meeting via teleconference to consider the information as presented by the Requesters and voted to extend the commercial real estate transaction temporary waiver relief in North Dakota for an additional one-year period, subject to specified terms and conditions, and subject to FFIEC approval. The FFIEC met on August 7, 2020, via WebEx, and a quorum of the Council being present, took the following action: Pursuant to § 1119(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, the Council approved the attached waiver extension that was approved by the ASC on July 29, 2020.

ASC Discussion

In order to extend the commercial real estate transaction temporary waiver relief in North Dakota for an additional one-year period, the 2019 Order set forth the following specified terms and conditions:

1. During the one-year period, the Requester is expected to develop a plan through continued dialogue with North Dakota stakeholders, including the Appraiser Board, to identify potential solutions to address appraiser scarcity and appraisal delay.

2. At least 30 days prior to the expiration of the one-year period, the Requester should provide (1) a status report to the ASC on the plan that was developed in collaboration with stakeholders and any implementation progress made on that plan toward identifying meaningful solutions to resolve appraiser scarcity and delay issues faced in North Dakota; and (2) supporting data showing that appraiser scarcity leading to significant delays continues to exist, which may include information to identify specific localities affected by appraiser scarcity. The ASC will consider the information as presented by the Requester, and by vote in open session, may extend the temporary waiver for an additional one-year period.

[1] ''Federally related transaction'' (FRT) refers to any real estate related financial transaction which: (a) A federal financial institutions regulatory agency engages in, contracts for, or regulates; and (b) requires the services of an appraiser. (Title XI § 1121 (4), 12 U.S.C. 3350.)

[2] 12 U.S.C. 3348(b).

[3] 12 CFR part 1102, subpart A.

[4] On September 7, 2018, ASC staff responded with a request for clarification and additional information, and on April 10, 2019, the Requesters submitted an additional letter with a clarification of the request and additional information.

[5] An approval of a temporary waiver by the ASC is subject to the approval of the FFIEC. (*See* 12 U.S.C. 3348(b); 12 CFR 1102.5.) On July 12, 2019, the FFIEC approved the temporary waiver granted by the ASC on July 9, 2019.

[6] 84 FR 38630 (August 7, 2019).

[7] The Order also included a temporary waiver of appraiser credentialing requirements for appraisals of FRTs under $500,000 for 1-to-4 family residential real estate transactions throughout the State of North Dakota for a period of one year, subject to earlier termination in the event the federal banking agencies issued a rule increasing appraisal exemption threshold limits for residential real estate transactions, in which case the residential waiver would terminate 60 days after the effective date of that threshold increase. The federal banking agencies issued a final rule increasing the appraisal exemption threshold for residential real estate transactions with an effective date of October 9, 2019. 83 FR 63110 (December 7, 2018). The temporary waiver for residential real estate transactions terminated by its own terms 60 days after the effective date of that rule on December 8, 2019.

[8] Requesters were joined in their July 6 submission by the Credit Union Association of the Dakotas and the Independent Community Banks of North Dakota.

In their July 6 submission, Requesters reported that a November 6, 2019 meeting had been held with North Dakota stakeholders, including appraisers.[9] Requesters provided a list of 25 ''ideas and potential solutions'' identified by the meeting's 58 attendees as potential steps to address appraiser scarcity or appraisal delays. Requesters stated that a follow-up meeting was planned for the spring of 2020, but that ''due to the challenges presented by the COVID–19 pandemic, all in-person meetings and conventions were canceled when travel became restricted and everyone responded to the crisis.'' Requesters further stated that ''[a]lthough our collaboration efforts have been disrupted for the time being, we are anticipating future collaboration to do as much as we can locally.''

In support of their assertion that a scarcity of appraisers persists in North Dakota, Requesters cited data from the Appraiser Board indicating that the number of certified general appraisers (needed to appraise commercial and agricultural properties) has fallen from 67 as of September 17, 2018, to 65 as of April 30, 2020. Requesters reported that a May 2020 survey by the North Dakota Department of Financial Institutions found that turnaround times for commercial appraisals have improved over the past year (which Requesters attributed to the current waiver and the increased appraisal threshold for credit unions for commercial real estate transactions) but 23 percent of respondents still report delays more than 50 percent of the time and 23 percent of respondents reported 5 or more delays in the past 12 months.

The ASC also considered information received from the Appraiser Board. The Appraiser Board stated that a July 2020 survey found that at least 80 percent of commercial appraisers responding reported appraisal turn times of five weeks or less in each of North Dakota's six regions. According to the same survey, 90 percent of agricultural appraisers responding reported appraisal turn times of six weeks or less in five of North Dakota's six regions.

In considering this request to extend commercial real estate transaction temporary waiver relief in North Dakota, the ASC found the information submitted by the Requesters to be less robust than the ASC had expected to support a one-year extension under the terms of the 2019 Order. The ASC also acknowledges extenuating and unprecedented circumstances. The United States has been operating under a presidentially declared emergency since March 13, 2020. The ASC acknowledges challenges posed by Coronavirus Disease 2019 (COVID–19). As stated in the *Interagency Statement on Appraisals and Evaluations for Real Estate Related Financial Transactions Affected by the Coronavirus*,[10] ''COVID–19 has significantly affected financial institutions and their customers.'' It is reasonable to conclude that the Requesters' intentions to further collaborate with financial institutions as well as other North Dakota stakeholders were negatively impacted by the disruption resulting from COVID–19. Further, the disruption resulting from COVID–19 impacted the ASC's expectations of what steps the Requesters could be expected to take to further collaborate with financial institutions as well as other North Dakota stakeholders. Given the impediments resulting from COVID–19, the State has sufficiently fulfilled the requirements of the 2019 Order to meet the ASC's altered expectations.

Specifically, in order to extend the temporary waiver, the ASC must make a determination that a scarcity of credentialed appraisers leading to significant delays in obtaining appraisals for FRTs continues to exist. In considering whether to extend the current waiver, the ASC has examined both evidence of scarcity of appraisers in North Dakota, and the evidence of scarcity leading to significant delays. The ASC considered the challenges the current pandemic has posed in gathering data about turnaround times. After reviewing all the facts of record, a majority of the ASC members have determined that a scarcity of appraisers continues to exist in North Dakota and that the scarcity is leading to significant delays in appraisal services for FRTs under $1,000,000 for commercial real estate transactions in North Dakota.

Therefore, for the reasons described above and after considering all the facts of record, by majority vote, the ASC determined to extend commercial real estate transaction temporary waiver relief for an additional one-year period, subject to specified terms and conditions, and subject to FFIEC approval, as follows:

1. A temporary waiver of appraiser credentialing requirements for appraisals of FRTs under $1,000,000 for commercial real estate transactions throughout the State of North Dakota is extended for an additional one-year period, expiring August 7, 2021.

2. During the additional one-year period, Requesters are expected to continue efforts to develop, through continued dialogue with the Appraiser Board and other North Dakota stakeholders, a plan to identify potential solutions to address appraiser scarcity and appraisal delays.

3. The ASC pursuant to 12 CFR 1102.7 may terminate this waiver order on a finding that significant delays in the receipt of appraisals for FRTs no longer exists, or that the terms and conditions of the order are not being satisfied.

Order

After reviewing all the facts of record, including submissions by the Requesters and by the Appraiser Board, the ASC has determined that a scarcity of appraisers continues to exist in North Dakota and that the scarcity is leading to a significant delays in appraisal services for FRTs under $1,000,000 for commercial real estate transactions in North Dakota.

Accordingly, and for the reasons stated in the ''ASC Discussion'' section above, and pursuant to section 1119(b) of Title XI and 12 CFR part 1102, subpart A, the ASC is extending the commercial real estate transaction temporary waiver relief for North Dakota for an additional one-year period, subject to the following specified terms and conditions, and subject to FFIEC approval:

1. A temporary waiver of appraiser credentialing requirements for appraisals of FRTs under $1,000,000 for commercial real estate transactions throughout the State of North Dakota is extended for an additional one-year period, expiring August 7, 2021.

2. During the additional one-year period, Requesters are expected to continue efforts to develop, through continued dialogue with the Appraiser Board and other North Dakota stakeholders, a plan to identify potential solutions to address appraiser scarcity and appraisal delays.

3. The ASC pursuant to 12 CFR 1102.7 may terminate this waiver order on a finding that significant delays in the receipt of appraisals for FRTs no longer exists, or that the terms and conditions of the order are not being satisfied.

* * * * *

By the Appraisal Subcommittee, August 7, 2020.

Tim Segerson,

Chairman.

[FR Doc. 2020–17660 Filed 8–12–20; 8:45 am]

BILLING CODE 6700–01–P

[9] In its submission, the Appraiser Board advised that appraisers in attendance at this meeting were not affiliated with the Appraiser Board.

[10] *Interagency Statement on Appraisals and Evaluations for Real Estate Related Financial Transactions Affected by the Coronavirus* was issued April 14, 2020, by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Consumer Financial Protection Bureau, National Credit Union Administration.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–0263]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled Requirements for the Importation of Nonhuman Primates into the United States to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on December 6, 2019 to obtain comments from the public and affected agencies. CDC received six comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Requirements for the Importation of Nonhuman Primates into the United States (OMB Control No. 0920–0263, Exp. 08/31/2020)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Under 42 CFR 71.53, CDC collects information pertaining to importers and imported nonhuman primates (NHP). This information collection enables CDC to evaluate compliance with pre-arrival of shipment notification requirements, to investigate the number and species of imported nonhuman primates, and to determine if adequate measures being taken for the prevention of exposure to persons and animals during importation.

Since May 1990, CDC has monitored the arrival and/or uncrating of certain shipments of non-human primates imported into the United States. In February 2013, CDC promulgated two regulations pertaining to the importation of nonhuman primates. The first rule, Establishment of User Fees for Filovirus Testing of Nonhuman Primate Liver Samples, outlines a process by which importers can send liver tissues to CDC from primates that die during importation from reasons other than trauma (2/12/2013, Vol.78, No. 29, p. 9828). CDC performs these tests due to the absence of a private sector option. The second rule, Requirements for Importers of Nonhuman Primates, consolidates into 42 CFR 71.53 the requirements previously found in 42 CFR part 71.53 with those found in the Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States (2/15/2013, Vol. 78, No. 32/p. 11522). It also rescinded the six-month special-permit requirements for cynomolgus, African green, and rhesus monkeys and extended the time period for registration/permit renewal from 180 days to two years, reducing much of the respondent burden. CDC feels these regulatory changes and reporting requirements balance the public health risks posed by the importation of nonhuman primates with the burden imposed on regulating their importation.

This information collection is designed to support real-time regulatory and monitoring activities, and the prevention of disease transmission from NHP to humans. Therefore, there is no standard reporting deadline or frequency. Respondents are only required to provide the information under the regulation if they seek to import nonhuman primates in the United States.

The CDC is requesting approval for a set of adjustments to the previously approved burden total for this information collection. The adjustments are as follows:

Adjustments

Based on the number of registered importers processed by CDC, CDC is adjusting upward, two of the information collections within this submission:

- Nonhuman Primate Importer Recordkeeping and reporting requirements for importing NHPs: Notification of shipment arrival 71.53(n).
- Nonhuman Primate Importer Quarantine release 71.53(l).

Changes

CDC is proposing a reformatting and changes to CDC 75.10A Registration Form for NHP Importation to clarify for respondents the information that should be submitted. This results in no changes in respondent burden.

CDC is adding the following information collections to delineate between specific information collections under the regulations at 42 CFR 71.53(m):

- Statements regarding the health of the nonhuman primates during travel and CDC quarantine (42 CFR 71.53(m) (no form)
- Statements, including necropsy reports, about the nonhuman primates upon their release from CDC quarantine. (42 CFR 71.53(m)

CDC is removing information collections, because CDC is not using the Partner Government Agency Message Set functionality within the Automated Commercial Environment:

- CDC Partner Government Agency Message Set for Importing Live Nonhuman Primates
- CDC Partner Government Agency Message Set for Importing Nonhuman Primate Products
- Documentation of Non-infectiousness 71.53(t)

OMB approval is requested for three years. The total number of hours

requested for this information collection total 185, which is a decrease of 737 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name/CFR reference	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Nonhuman Primate Importer ..	CDC 75.10A Application for Registration as an Importer of Nonhuman Primates (New Importer).	1	1	10/60
Nonhuman Primate Importer ..	CDC 75.10A Application for Registration as an Importer of Nonhuman Primates (Re-Registration).	12	1	10/60
Nonhuman Primate Importer ..	71.53(g1)(iii) and (h) Documentation and Standard Operating Procedures (no form) (New Importer).	1	1	10
Nonhuman Primate Importer ..	71.53(g)(1)(iii) and (h) Documentation and Standard Operating Procedures (no form) (Registered Importer).	12	1	30/60
Nonhuman Primate Importer ..	Recordkeeping and reporting requirements for importing NHPs: Notification of shipment arrival 71.53(k), (n) (no form).	25	6	15/60
Nonhuman Primate Importer ..	Statements regarding the health of the nonhuman primates during travel and CDC quarantine (42 CFR 71.53(m) (no form).	25	6	15/60
Nonhuman Primate Importer ..	Statements, including necropsy reports, about the nonhuman primates upon their release from CDC quarantine. (42 CFR 71.53(m) (no form).	25	3	15/60
Nonhuman Primate Importer ..	Quarantine release 71.53(l) (no form)	25	6	15/60
Nonhuman Primate Importer ..	71.53(v) Form: Filovirus Diagnostic Specimen Submission Form for Non-human Primate Materials.	10	10	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–17709 Filed 8–12–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–1054; Docket No. CDC–2020–0090]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection entitled ''Drug Overdose Response Investigation (DORI) Data Collections.'' CDC will use the information collected to respond to urgent requests from state and local health authorities to provide epidemiological information that allows for the selection of interventions to curb local epidemics of drug overdose.

DATES: Written comments must be received on or before October 13, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0090 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

5. Assess information collection costs.

Proposed Project

Drug Overdose Response Investigation (DORI) Data Collections (OMB Control No. 0920–1054, Exp. 03/31/2018)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2015, CDC received OMB approval (OMB Control No. 0920–1054) for a new Generic clearance for a three-year period to collect information to respond to urgent requests from state and local health authorities to provide epidemiological information that allows for the selection of interventions to curb local epidemics of drug overdose. CDC seeks OMB approval for a Revision of this generic clearance for a three-year period.

Drug Overdose Response Investigation (DORI) are to be conducted in response to urgent requests from state and local health authorities. Of particular interest is response to increasing trends in, or changing characteristics of, overdose from prescription drugs (with a special interest in opioid analgesics such as oxycodone or methadone; benzodiazepines such as alprazolam) and/or illicit drugs (*e.g.,* heroin). CDC's National Center for Injury Prevention and Control (NCIPC) is frequently called upon to conduct DORIs at the request of state or local health authorities seeking support to respond to urgent public health problems resulting from drug use, misuse, addiction, and overdose. Such requests are typically, but not always, made through the Epi-Aid mechanism. In most investigations, CDC's epidemiological response entails rapid and flexible collection of data that evolves during the investigation period.

A Generic clearance is requested to ensure that timely information is collected during a DORI, which allows NCIPC to maintain critical mission function by working with state and local health authorities to protect the public's health. During an unanticipated rise in nonfatal or fatal drug overdose where the substances responsible for the health event need to be identified, drivers and risk factors are undetermined, and/or subgroups at risk need to be identified, immediate action by CDC is necessary to minimize or prevent public harm. CDC must have the ability to rapidly deploy data collection tools to understand the scope of the problem and determine appropriate action. Procedures for each investigation, including specific data collection plans, depend on the time and resources available, number of persons involved, and other circumstances unique to the urgent conditions at hand. Data are collected by epidemiologists, psychologists, medical professionals, subject matter experts, and biostatisticians.

Data collected during a DORI are used to understand sudden increases in drug use and misuse associated with fatal and nonfatal overdoses, understand the drivers and risk factors associated with those trends, and identify the groups most affected. This allows CDC to effectively advise states on actions that could be taken to control the local epidemic. During a DORI, data are collected once, with the rare need for follow-up. The estimated annual burden hours are 1,500, there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Drug Overdose Response Investigation Participants.	DORI Data Collection Instruments ...	3,000	1	30/60	1,500

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–17710 Filed 8–12–20; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10390]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by October 13, 2020.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10390 Hospice Quality Reporting Program

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection without change; *Title of Information Collection:* Hospice Quality Reporting Program; *Use:* The Hospice Item Set (HIS) is a standardized, patient-level data collection tool developed specifically for use by hospices. It is currently used for the collection of quality measure data pertaining to the Hospice Quality Reporting Program (HQRP). Since April 1, 2017, hospices have been using the HIS V2.00.0 which specifies the collection of data items that support eight National Quality Forum (NQF) endorsed Quality Measures (QMs) and an additional measure pair for hospice. All Medicare-certified hospice providers are required to submit HIS admission and discharge records to CMS for each patient admission and discharge. The HIS contains data elements that are used by the CMS to calculate these measures and also allows CMS to collect quality data from hospices in compliance with Section 3004 of the Affordable Care Act. The information collection request was revised to remove Section O of the HIS discharge assessment now that we proposed to replace it with the claims-based Hospice Visits in the Last Days of Life quality measure. *Form Number:* CMS–10390 (OMB control number: 0938–1153); *Frequency:* On Occasion; *Affected Public:* State, Local, or Tribal Governments, Private Sector (not-for-profit institutions); individuals or households; *Number of Respondents:* 4,688; *Total Annual Responses:* 1,328,417; *Total Annual Hours:* 636,312. (For policy questions regarding this collection contact Cindy Massuda at (410) 786–0652.)

Dated: August 10, 2020.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2020–17738 Filed 8–12–20; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Youth Empowerment Information, Data Collection, and Exploration on Avoidance of Sex (IDEAS) (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), proposes survey data collection activities as part of the Youth Empowerment IDEAS study.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *OPREinfocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: OPRE/ACF/HHS proposes data collection activities as part of the Youth Empowerment IDEAS study. The goal of this project is to collect descriptive data that will inform educational topics and strategies for adolescent pregnancy prevention and youth health and well-being. The project will identify messages and themes that are most likely to resonate with youth. The project will inform hypotheses on how to increase the effectiveness of sex education approaches so that more youth avoid the risks associated with teen sex and teen pregnancy rates are reduced. To support these efforts, we seek approval from the Office of Management and Budget to collect survey information from youth and young adults ages 14–24 and of parents of teens ages 14–18 using an online panel that is based on a probability-based sample of the U.S. population. We propose the following data collection instruments:

(1) *Parent Survey:* We will administer this as a web survey. Information collected through the Parent Survey will be used to report on demographics, the parent-child relationship, parents' attitudes and beliefs about youth sex education and sexual behaviors, and parental knowledge about youth sexual risk-taking.

(2) *Youth Survey:* We will administer a web survey in two parts to youth ages 14–18. Information collected on Part I of the survey will be used to report on demographics, the parent-child relationship, future aspirations, and attitudes and beliefs about youth sexual behavior. Information collected on Part II of the survey will include knowledge about sexual risk, experience with sex education, and sexual risk behaviors.

(3) *Young Adult Survey:* We will administer this to young adults ages 19–24 as a web survey. Topics align with the youth survey, but with slight wording changes to reflect the older population.

Respondents: The survey respondents are from an online panel of a probability-based sample of the U.S. population of parents of youth ages 14–18 and their youth ages 14–18 and of young adults ages 19–24.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
(1) Parent Survey	1,550	1	.333	516	172
(2) Part I Youth Survey	675	1	.333	225	75
(3) Part II Youth Survey	590	1	.333	197	66
(4) Young Adult Survey	775	1	.583	452	151

Estimated Total Annual Burden Hours: 464.

(Authority: Sec. 510. [42 U.S.C. 710])

John M. Sweet,

ACF/OPRE Certifying Officer.

[FR Doc. 2020–17680 Filed 8–12–20; 8:45 am]

BILLING CODE 4184–83–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1550]

New Drugs Regulatory Program Modernization: Implementation of the Integrated Assessment of Marketing Applications and Integrated Review Documentation; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the following public workshop entitled ''New Drugs Regulatory Program Modernization: Implementation of the Integrated Assessment of Marketing Applications and Integrated Review Documentation.'' The purpose of the public workshop is to seek public comments/feedback on the Integrated Review documentation generated by the new Integrated Assessment of marketing applications for new drug products developed as part of the New Drugs Regulatory Program Modernization. The Agency hopes to receive public feedback on how this Integrated Review documentation can continue supporting our stakeholders' needs. Please see information and examples relevant to the Integrated Review at *http://wcms-internet.fda.gov/drugs/news-events-human-drugs/integrated-assessment-marketing-applications-workshop-10302020-10302020.*

DATES: The public workshop will be held virtually and broadcast via webcast only on October 30, 2020, from 9 a.m. to 3 p.m. Registration to attend the meeting and other information can be found at *http://wcms-internet.fda.gov/drugs/news-events-human-drugs/integrated-assessment-marketing-applications-workshop-10302020-10302020.* The public meeting may be extended or may end early depending on the level of public participation. Submit either electronic or written comments on this public workshop by December 30, 2020. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before December 30, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 30, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1550 for ''New Drugs Regulatory Program Modernization: Implementation of the Integrated Assessment of Marketing Applications and Integrated Review Documentation.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT:

Rhonda M. Hearns-Stewart, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 3249, Silver Spring, MD 20993–0002, 240–402–3180, *Rhonda.Hearns-Stewart@fda.hhs.gov,* with the subject line ''Collecting Public Feedback on the Integrated Assessment.''

SUPPLEMENTARY INFORMATION:

I. Background

The Integrated Assessment of marketing applications includes a new process and review template for the assessment and documentation of new drug product marketing applications (*e.g.,* new drug applications or biologics license applications (BLAs)) in the Center for Drug Evaluation and Research. The resultant Integrated Review is the product of an interdisciplinary team assessment process that provides collaborative discussions of key review issues that span multiple disciplines and includes resolution of important issues pertinent to benefit-risk assessments. This interdisciplinary approach facilitates clarity of decision making and ensures input from relevant disciplines in the consideration of scientific issues. FDA believes the format and content of the Integrated Review documentation will provide sufficient detail concerning the evidence of efficacy and assessment of risk and risk management as well as a clearer description of FDA's analysis of the scientific issues raised by the application and the scientific reasoning supporting the benefit-risk determination. The overall objective is to more effectively communicate the basis for FDA's decision on applications.

This new Integrated Review document replaces the current documentation, which included a separate review document authored by each discipline. It also replaces the multidisciplinary review (*i.e.,* Unireview) in which each discipline provided a separate review section but within a single review document. FDA is currently undergoing a phased implementation of the Integrated Review documentation for new molecular entities, original BLAs, and select efficacy supplements. FDA plans to expand the scope to other marketing application types in the near future.

The following guiding principles informed the Integrated Assessment process and associated Integrated Review documentation:

• The importance of conducting an issue-focused assessment,

• enhanced communication both within the review team and with the applicant, and

• strong interdisciplinary collaboration.

The Integrated Review documentation template has three main components:

• Executive Summary:

○ Represents FDA's conclusions regarding key scientific and regulatory issues while describing any differences of scientific opinion or perspective,

○ provides a summary of FDA's decision and assessment of the application, including FDA's benefit-risk determination (as currently employed in marketing application reviews), and

○ provides an overall Agency assessment, including an overview of the major decisions made during the review process, and a brief discussion of the basis for the decisions.

• Interdisciplinary Assessment:

○ Includes succinct, integrated, focused analyses of the evidence of benefit, risk and risk management, and therapeutic individualization (*e.g.,* special populations, drug interactions).

○ Highlights key review issues (including analyses specific to key issues) the review team thinks are pertinent to the decision-making process. Issues are presented and assessed in an interdisciplinary manner.

○ Includes any dissenting data interpretations.

• Discipline-Specific Appendices:

○ Contains assessments and analyses that are supportive and/or important to key facts/data or conclusions included in the overall review, and in certain instances may include discipline-specific content (*e.g.,* relevant pharmacology/toxicology information),

○ May contain work that did not directly impact the overall assessment of benefit-risk, regulatory action, labeling, or risk-mitigation plans, and

○ includes separate reviews of reviewers who disagree with significant elements of the Executive Summary and Interdisciplinary Assessment sections or the decision of the Signatory Authority.

In general, the first two parts of the Integrated Review document would be expected to provide a complete explanation of FDA's action and supporting analyses, with the third component (the appendices) providing additional detail on the comprehensive analyses FDA conducted in its review of the drug application.

The target audiences for this document are diverse and include those with a specific interest in the application such as the lay public, drug sponsors, researchers, and others who are seeking to understand the basis for FDA's decision.

As part of FDA's ongoing evaluation of the Integrated Assessment and its implementation, the Agency is interested in receiving responses to the following questions/topics, in addition to any general comments the public might have. For convenience, it would be helpful if commenters refer to the numbered question and topic when submitting responses and comments.

II. Topics for Discussion at the Public Workshop

The Agency is soliciting public feedback on how the Integrated Review can continue supporting our stakeholders' needs.

The Agency welcomes any relevant information specific to the Integrated Review that stakeholders wish to share

at the meeting or in a submission to the docket, but we emphasize that the focus of this meeting is to seek input that prioritizes feedback specifically on characteristics of the Integrated Review document. Please see information and examples relevant to the Integrated Review at *http://wcms-internet.fda.gov/drugs/news-events-human-drugs/integrated-assessment-marketing-applications-workshop-10302020-10302020.*

Furthermore, we anticipate that the most informative suggestions would not be specific to an indication, a therapeutic area, or a disease but rather apply across multiple indications, therapeutic areas, or diseases. We are particularly interested in the topics that follow:

1. We are interested in preserving for stakeholders what they find most useful in FDA reviews.

a. Comparing the Integrated Review to previous reviews, is there any information you are having difficulty locating?

b. Are you able to use the Integrated Review for the same purpose that you used previous reviews? If not, please provide specific examples.

2. We are interested in specific recommendations about any areas of the Integrated Review documentation of the Integrated Assessment that can be improved to meet the needs of stakeholders.

3. We are interested in stakeholders' views regarding the advantages and disadvantages of an interdisciplinary assessment presentation of key review issues and resulting integration of the assessments of multiple disciplines into a single Integrated Review document.

4. We would like to know whether the new format of the Integrated Review document for the Integrated Assessment can provide clarity of benefit-risk assessments and inform your knowledge of FDA's basis for making decisions.

III. Participating in the Public Workshop

Registration: Please visit the following website to register: *https://www.eventbrite.com/e/integrated-assessment-of-marketing-applications-workshop-tickets-102979608782.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Persons interested in attending this virtual public workshop must register by September 30, 2020, by 11:59 p.m. Eastern Time.

Requests for Oral Presentations: During online registration you may indicate if you wish to present during a public comment session or participate in a specific session, and which topic(s) you wish to address. We will do our best to accommodate requests to make public comments and requests to participate in the focused sessions. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the focused sessions. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by October 14, 2020. All requests to make oral presentations must be received by the close of registration on September 30, 2020, by 11:59 p.m. EST. If selected for presentation, submit electronic copies of any presentation materials (Power Point or PDF) to *ONDPublicMTGSupport@fda.hhs.gov* no later than October 21, 2020. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Streaming Webcast of the Public Workshop: This webcast for this public workshop is available at *https://collaboration.fda.gov/newdrugs103020/.* If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Transcripts: Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at *http://wcms-internet.fda.gov/drugs/news-events-human-drugs/integrated-assessment-marketing-applications-workshop-10302020-10302020.*

Dated: August 7, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–17721 Filed 8–12–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–4951]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Humanitarian Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for humanitarian use devices (HUDs).

DATES: Submit either electronic or written comments on the collection of information by October 13, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 13, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 13, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such

as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–4951 for ''Agency Information Collection Activities; Proposed Collection; Comment Request: Medical Devices; Humanitarian Use Devices.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Humanitarian Use Devices—21 CFR Part 814

OMB Control Number 0910–0332—Extension

This collection of information implements the humanitarian use devices (HUDs) provision of section 520(m) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(m)) and part 814, subpart H (21 CFR part 814, subpart H). Under section 520(m) of the FD&C Act, FDA is authorized to exempt an HUD from the effectiveness requirements of sections 514 and 515 of the FD&C Act (21 U.S.C. 360d and 360e) provided that the device: (1) Is designed to treat or diagnose a disease or condition that affects no more than 8,000 individuals in the United States; (2) would not be available to a person with a disease or condition unless an exemption is granted and there is no comparable device other than another HUD approved under this exemption that is available to treat or diagnose such disease or condition; and (3) will not expose patients to an unreasonable or significant risk of illness or injury and the probable benefit to health from the use of the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

Respondents may submit a humanitarian device exemption (HDE) application seeking exemption from the effectiveness requirements of sections 514 and 515 of the FD&C Act as authorized by section 520(m)(2) of the FD&C Act. The information collected will assist FDA in making determinations on the following: (1) Whether to grant HUD designation of a medical device; (2) whether to exempt an HUD from the effectiveness requirements under sections 514 and 515 of the FD&C Act, provided that the device meets requirements set forth under section 520(m) of the FD&C Act; and (3) whether to grant marketing approval(s) for the HUD. Failure to collect this information would prevent FDA from making a determination on the factors listed previously in this document. Further, the collected information would also enable FDA to determine whether the holder of an HUD is in compliance with the HUD provisions under section 520(m) of the FD&C Act.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity; 21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Request for HUD designation—814.102	20	1	20	40	800
HDE Application—814.104	4	1	4	328	1,312
HDE Amendments and resubmitted HDEs—814.106	20	5	100	50	5,000
HDE Supplements—814.108	116	1	116	80	9,280
Notification of withdrawal of an HDE—814.116(e)(3)	2	1	2	1	2
Notification of withdrawal of IRB approval—814.124(b)	1	1	1	2	2
Periodic reports—814.126(b)(1)	50	1	50	120	6,000
Total					22,396

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity; 21 CFR section	Number of recordkeepers	Number of records per respondent	Total annual records	Average burden per recordkeeping	Total hours
HDE Records—814.126(b)(2)	65	1	65	2	130

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity; 21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Notification of emergency use—814.124(a)	22	1	22	1	22

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of respondents in tables 1, 2, and 3 are an average based on data for the previous 3 years, *i.e.,* fiscal years 2017 through 2019. The number of respondents has been adjusted to reflect updated respondent data. This has resulted in an overall increase of 5,809 hours to the total estimated burden. The number of annual reports submitted under § 814.126(b)(1) in table 1 reflects 50 respondents with approved HUD applications. Under § 814.126(b)(2) in table 2, the estimated number of recordkeepers is 65.

We have also updated the burden estimate consistent with new provisions in § 814.104(b)(4)(i)) regarding ''Human Subject Protection; Acceptance of Data from Clinical Investigations for Medical Devices'' (83 FR 7366; February 21, 2018) (approved under OMB control number 0910–0741). Section 814.104 is being amended to address submission of data from clinical investigations in a Humanitarian Device Exemption (HDE). To the extent the applicant includes data from clinical investigations, the applicant will be required to include the information and statements as described in § 814.104(b)(4)(i). Consistent with our estimate in OMB control number 0910–0741, this revision increases our burden estimate for an HDE by 8 hours per submission.

Dated: August 7, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–17716 Filed 8–12–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0076]

Agency Information Collection Activities; Proposed Collection; Comment Request; Electronic Records; Electronic Signatures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements governing the acceptance of electronic records and electronic signatures.

DATES: Submit either electronic or written comments on the collection of information by October 13, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before October 13, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 13, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2011–N–0076 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Electronic Records; Electronic Signatures.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Electronic Records; Electronic Signatures—21 CFR Part 11

OMB Control Number 0910–0303—Extension

This information collection supports FDA regulations in part 11 (21 CFR part 11), which govern criteria for acceptance of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records. Under these regulations, records and reports may be submitted to us electronically provided that we have stated our ability to accept the records electronically in an Agency-established public docket and that the other requirements of part 11 are met.

The recordkeeping provisions in §§ 11.10, 11.30, 11.50, and 11.300 require the following standard operating procedures to ensure appropriate use of and precautions for systems using electronic records and signatures: (1) § 11.10 specifies procedures and controls for persons who use closed systems to create, modify, maintain, or transmit electronic records; (2) § 11.30 specifies procedures and controls for persons who use open systems to create, modify, maintain, or transmit electronic records; (3) § 11.50 specifies procedures and controls for persons who use electronic signatures; and (4) § 11.300 specifies controls to ensure the security and integrity of electronic signatures based upon use of identification codes in combination with passwords. The reporting provision (§ 11.100) requires persons to certify to us in writing that they will regard electronic signatures used in their systems as the legally

binding equivalent of traditional handwritten signatures.

The burden created by the information collection provision of this regulation is a one-time burden associated with the creation of standard operating procedures, validation, and certification. We anticipate that the use of electronic media will substantially reduce the paperwork burden associated with maintaining FDA-required records. The respondents are businesses and other for-profit organizations, State or local governments, Federal Agencies, and nonprofit institutions.

To assist respondents with the information collection we have developed the guidance document entitled ''Guidance for Industry: Part 11, Electronic Records; Electronic Signatures—Scope and Application,'' available on our website at *https://www.fda.gov/media/75414/download.* While we do not believe the guidance creates any attendant burden, it describes the Agency's thinking regarding persons who, in fulfillment of a requirement in a statute or another part of FDA's regulations to maintain records or submit information to FDA, have chosen to maintain the records or submit designated information electronically and, as a result, have become subject to part 11. Part 11 applies to records in electronic form that are created, modified, maintained, archived, retrieved, or transmitted under any records requirements set forth in Agency regulations. Part 11 also applies to electronic records submitted to the Agency under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, even if such records are not specifically identified in Agency regulations (§ 11.1).

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§ 11.100	4,500	1	4,500	1	4,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of record per recordkeepers	Total annual records	Average burden per recordkeeping	Total hours
§ 11.10	2,500	1	2,500	20	50,000
§ 11.30	2,500	1	2,500	20	50,000
§ 11.50	4,500	1	4,500	20	90,000
§ 11.300	4,500	1	4,500	20	90,000
Total					280,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: August 5, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–17711 Filed 8–12–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1298]

Acute Myeloid Leukemia: Developing Drugs and Biological Products for Treatment; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Acute Myeloid Leukemia: Developing Drugs and Biological Products for Treatment.'' This draft guidance is intended to assist sponsors in the clinical development of drugs and biological products for the treatment of acute myeloid leukemia (AML). This draft guidance addresses FDA's current thinking regarding the overall development program and clinical trial designs for the development of drugs and biological products to support an indication of treatment of AML, including indications limited to an individual phase of treatment (for example, maintenance, transplantation preparative regimen, etc.). The draft guidance addresses the topics of general drug development, efficacy endpoints, and exploratory and confirmatory trial considerations for AML drug development. In addition, the draft guidance addresses investigational new drug applications, new drug applications, and biologics licensing applications for AML drugs.

DATES: Submit either electronic or written comments on the draft guidance by October 13, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your

comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1298 for ''Acute Myeloid Leukemia: Developing Drugs and Biological Products for Treatment.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to Division of Drug Information, CDER, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development, CBER, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Donna Przepiorka, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2116, Silver Spring, MD 20993–0002, 301–796–5358; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Acute Myeloid Leukemia: Developing Drugs and Biological Products for Treatment.'' This draft guidance is intended to assist sponsors in the clinical development of drugs and biological products for the treatment of AML. This draft guidance includes FDA's current thinking regarding the overall development program and clinical trial designs to support an indication of treatment of AML, including indications limited to an individual phase of treatment.

New classes of drugs are being developed as alternatives to the standard cytotoxic drugs for the treatment of AML. The following factors contribute substantially to the complexity of clinical development programs for such new drugs: The expansion of treatment intent, broadening of the intended population, and development of a wide range of new drug classes as alternatives to cytotoxic drugs. This draft guidance includes FDA's thinking regarding general drug development considerations, efficacy endpoints, exploratory and confirmatory trial considerations, and regulatory submissions for AML drugs to facilitate the development of new drugs for the treatment of AML.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Acute Myeloid Leukemia: Developing Drugs and Biological Products for Treatment.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 601 have been approved under 0910–0338; and the collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances*, or *https://www.regulations.gov.*

Dated: August 7, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–17714 Filed 8–12–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Teaching Health Center Graduate Medical Education Program Cost Evaluation, OMB No. 0906–XXXX—NEW

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than September 14, 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: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION: *Information Collection Request Title:* Teaching Health Centers Graduate Medical Education Program Cost Evaluation, OMB No. 0906–XXXX—NEW.

Abstract: The Teaching Health Center Graduate Medical Education (THCGME) program, authorized by Section 340H of the Public Health Service Act, was established by Section 5508 of Public Law (Pub. L.) 111–148. The Bipartisan Budget Act of 2018 (Pub. L. 115–123) provided continued funding for the THCGME Program for fiscal years 2018 and 2019 and the Coronavirus Aid, Relief, and Economic Security Act extends funding for FY 2020 and for the first two months of FY 2021 (until November 30, 2020). The THCGME program provides funding support for new and the expansion of existing primary care residency training programs in community-based settings. The primary goals of this program are to increase the production of primary care providers who are better prepared to practice in community settings, particularly with underserved populations, and improve the geographic distribution of primary care providers.

Need and Proposed Use of the Information: Statute requires the Secretary to determine an appropriate THCGME program payment for indirect medical expenses (IME) as well as to update, as deemed appropriate, the per resident amount used to determine the Program's payment for direct medical expenses (DME). To inform these determinations and to increase understanding of this model of residency training, George Washington University (GW), under contract with HRSA, is conducting an evaluation of the costs associated with training residents in the THC model. GW has developed a standardized THCGME Costing Instrument to gather data from all THCGME programs, which they will use to gather costing information related to both DME and IME. The information gathered in the THCGME Costing Instrument includes, but is not limited to, resident and faculty full-time equivalents, salaries and benefits, residency administration costs, educational costs, residency clinical operations and administrative costs, patient visits and clinical revenue generated by medical residents, financial reports, as well as general program information to understand the characteristics of the THCGME program and sponsoring institutions that are involved in residency training.

A 60-day notice published in the **Federal Register** on April 30, 2020, vol. 85, No. 84; pp. 23975–76. One public comment was received. GW also consulted with a GME Expert Panel to provide an external informed review of the THCGME Costing Instrument. Recommendations were received from the GME Expert Panel and minor changes were made. The feedback provided by the public comment and the GME Expert Panel included recommendations to: (1) Collect information on telehealth visits in 2018–2019 as a benchmark for telehealth activity post COVID–19 pandemic; (2) change to academic year 2018–2019 for the data collection period; and (3) further solidify the IME methodology for the non-THC Federally Qualified Health Center comparison group; and (4) enhance the THCGME Costing Instrument instructions.

HRSA is collecting costing information related to both DME and IME in an effort to establish a THC's total cost of running a residency program, to assist the Secretary in determining an appropriate update to the per resident amount used to calculate the payment for DME and an appropriate IME payment. The described data collection activities will serve to inform these statutory requirements for the Secretary in a uniform and consistent manner.

Likely Respondents: The likely respondents to the THCGME Costing Instrument are the THCGME program award recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Teaching Health Center Costing Instrument	56	1	56	10	560
Total	56		56		560

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2020–17729 Filed 8–12–20; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Delegation of Authority

Notice is hereby given that I have delegated jointly to the Administrator, Centers for Medicare & Medicaid Services (CMS), and to the Director, National Institutes of Health (NIH), the authorities vested in the Secretary under Section 1881(c)(7)(B)–(E) [42 U.S.C. 1395rr(c)(7)(B)–(E)] of the Social Security Act (the Act), as amended, to assemble and analyze data reported by network organizations, transplant centers, and other sources on all end-stage renal disease (ESRD) patients.

Limitations

This delegation of authorities under Section 1881(c)(7)(B)–(E) [42 U.S.C. 1395rr(c)(7)(B)–(E)] of the Act shall be shared between CMS and NIH as these authorities relate to their respective programs. CMS and NIH will implement proactive collaborative measures such as ongoing status checks to discuss progress and resolve any potential disputes.

This delegation supersedes any prior delegations under this section, including the delegation dated September 6, 1984 (49 FR 35247).

This delegation of authority may be re-delegated.

This delegation of authority is effective immediately.

I hereby affirm and ratify any actions taken by the Administrator, CMS, and the Director, NIH, or their subordinates, which involved the exercise of authority under Section 1881(c)(7)(B)–(E) [42 U.S.C. 1395rr(c)(7)(B)–(E)] of the Act, as amended, delegated herein prior to the effective date of this delegation of authority.

Authority: 42 U.S.C. 1395.

Alex M. Azar II,

Secretary.

[FR Doc. 2020–17748 Filed 8–12–20; 8:45 am]

BILLING CODE 4150–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[Assistance Listing Number 93.933]

Awards Unsolicited Proposal for the Health Communication Initiative Program

AGENCY: Office of Clinical and Preventive Services, Indian Health Service, Department of Health and Human Services.

ACTION: Notice of award of a single-source unsolicited grant to Johns Hopkins University in Baltimore, Maryland.

Recipient: Johns Hopkins University, Baltimore, Maryland.

Purpose of the Award: Cooperative agreement to collect, develop, package and distribute information to American Indian and Alaska Native (AI/AN) communities to address the coronavirus disease 2019 (COVID–19)-specific recommendations on healthcare, in a culturally sensitive way.

Amount of Award: $127,644 in Fiscal Year (FY) 2020.

Period of Performance: April 24, 2020–August 24, 2020.

SUMMARY: The Office of Clinical and Preventive Services (OCPS) announces the award of a single-source cooperative agreement in response to an unsolicited proposal from Johns Hopkins University, Baltimore, Maryland. The proposal submitted was not solicited either formally or informally by any federal government official.

OCPS performed an objective review of the unsolicited proposal from Johns Hopkins University (JHU) to develop information on proper actions to mitigate the spread of COVID–19, in a culturally sensitive way. The Johns Hopkins Bloomberg School of Public Health (JHSPH) Center for American Indian Health (CAIH) mission is to work in partnerships with AI/AN communities to raise their health status, self-sufficiency, and health leadership to the highest possible level. This mission is accomplished through research, training and education, and service. The CAIH has more than nine facilities and approximately 100 staff in the Southwestern tribal communities to assist the Indian Health Service (IHS) in containing and mitigating COVID–19, while building a response model and set of communication materials for all IHS regions nationwide. The CAIH can draw on broad expertise from JHU for additional guidance and recommendations on best practices as the situation evolves.

The materials will be developed from the Centers for Disease Control and Prevention (CDC) and the Substance Abuse and Mental Health Services Administration (SAMHSA) guidance. Based on an internal review of the proposal and the immediate response of the IHS to address the COVID–19 public health emergency, OCPS determined that the proposal has merit.

The long history between the federal government and Native American Tribes and people has often been less than ideal. There are still barriers to the Native American community accepting instruction or direction from the federal government. There is great value in having a third party that has a good history with the community to gather, package and deliver recommendations, in a culturally sensitive way, on staying safe from this disease, when those recommendations may run contrary to cultural norms. This delivery avenue will be more acceptable to the community, and will be more readily recognized for implementation within AI/AN communities.

This award is being made noncompetitively because there is no current, pending, or planned funding opportunity announcement under which this proposal could be competed. OCPS has identified two additional key reasons to support rationale for awarding this unsolicited proposal:

1. The JHU CAIH is well known in the AI/AN communities for robust

communication/messaging networks, research, training, and subject matter expertise. The dissemination of critical COVID–19 information for tribal communities builds trust, credibility, and integrity of promoting a culturally sensitive public health approach around the information.

2. The JHU CAIH is uniquely positioned to provide culturally specific subject matter expertise drawn from a direct care services or ''boots on the ground'' approach. The CAIH has nearly 40 years of collaboration with Native American tribes and supports public health interventions in more than 140 tribal communities in over 21 states. The breadth of knowledge and existing partnerships will enhance dissemination of information nationally.

Legislative Authority: The Snyder Act, 25 U.S.C. Section 13; the Indian Health Care Improvement Act, 25 U.S.C. Section 1621b; and Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136.

FOR FURTHER INFORMATION CONTACT: Audrey Solimon at *Audrey.Solimon@ihs.gov* or by telephone at 301–590–5421.

Michael D. Weahkee,

RADM, Assistant Surgeon General, U.S. Public Health Service, Director, Indian Health Service.

[FR Doc. 2020–17516 Filed 8–12–20; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public by videocast as indicated below. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: September 15, 2020.

Open: 12:00 p.m. to 3:00 p.m.

Agenda: Report from the Institute Director and other Institute Staff.

Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Closed: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David T. George, Ph.D., Associate Director, Office of Research Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 920, Bethesda, MD 20892, *georged@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm,* where an agenda and any additional information for the meeting will be posted when available.

Dated: August 7, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–17678 Filed 8–12–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Start-Up Patent License for Evaluation: Immunotherapy for Relapsed/Refractory Diffuse Large B Cell Lymphoma

AGENCY: National Institutes of Health, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Heart, Lung, and Blood Institute, of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive start-up patent license for evaluation to ONK Therapeutics, a start-up company spun-off from the National University of Ireland Galway, and incorporated under the laws of the Republic of Ireland, to practice, for a limited time, the inventions covered by the patent estate listed in the Supplementary Information section of this notice. Upon expiration of the evaluation period the granted licenses may be converted into a fully exclusive patent commercialization license for the term of the last to expire of the patent estate upon the company providing NHLBI with a commercial development plan supporting such a conversion. This notice is intended to apprise the public of a aforementioned license and provide a fifteen (15) day notice period for the objection.

DATES: Only written comments and/or applications for a license which are received by the National Heart, Lung, and Blood Institute on or before August 28, 2020 will be considered.

ADDRESSES: Requests for copies of patent applications (electronic only), inquiries, and comments relating to the contemplated an exclusive patent license should be emailed to: Michael Shmilovich, Esq., Senior Licensing and Patent Manager, 31 Center Drive Room 4A29, MSC2479, Bethesda, MD 20892–2479, phone number 301–435–5019 *shmilovm@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property (Patent Estate)

HHS Ref. No. E–036–2015–0 and –1, U.S. Provisional Patent Application 62/079,975 filed November 14, 2014 (expired), International Patent Application PCT/US2015/060646 filed November 13, 2015 (nationalized), U.S. Patent Application 15/525,921 having an effective filing date of November 13, 2015, and U.S. Divisional Patent Application 16/985,797 filed August 5, 2020, any and all continuation or divisional applications claiming priority to any of the above.

The patent rights in these inventions have been assigned or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide and in field of use that may be limited to *Immunotherapy against relapsed or refractory diffuse large B cell lymphoma,* and where the ''Licensed Products'' may be defined to be limited to transgenically modified allogeneic natural killer cells within the scope of the Licensed Patent Rights that transiently express one or more of a (1) CCR7 receptor, (2) CD16a (HA–CD16), (3) a DR5 specific TRAIL, or (4) CD19 chimeric antigen receptor.

The aforementioned patent estates cover methods of treating a subject with a tumor by administering transgenically modified adoptive NK (natural killer cells), methods of generating transgenic NK cells, and transgenic NK cells per se.

In particular, the claims cover include transgenic NKs expressing CCR7 and CD16a (HA–CD16). The treatment methods also include dependent claims where the transgenic NK cells are co-administered with a monoclonal antibody therapeutic (*e.g.,* rituximab). CCR7 is a chemokine receptor (chemokine (C—C motif) receptor 7) known to direct cellular migration to secondary lymphoid tissues, including lymph nodes where hematological malignancies such as diffuse large B cell lymphoma (DLBCL) reside. Normally, CCR7 is expressed by only a small subset of resting primary NK cells.

CD16 includes Fc receptors FcγRIIIa (CD16a) and FcγRIIIb (CD16b) found on the surface of natural killer (NK) cells and other leukocytes. CD16a binds to the Fc tail of IgG antibodies which then activates the NK cell for antibody-dependent cellular toxicity (ADCC). Human wild type CD16 has a relatively low affinity for IgG1 antibodies. However, a single nucleotide polymorphism (SNP rs396991) in the CD16a gene (F to V at position 158; referred to hereafter as HA–CD16) results in substantially higher IgG1 affinity and superior NK mediated ADCC.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive licenses, both the one granted for the evaluation period and if converted into a full exclusive patent commercialization license, will be royalty bearing. The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Heart, Lung, and Blood Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated August 5, 2020.

Michael Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute.

[FR Doc. 2020–17703 Filed 8–12–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR19–202: High Impact, Interdisciplinary Science in NIDDK Research Areas (RC2 Clinical Trial Optional)—Hematological Diseases.

Date: September 28, 2020.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Blvd., Bethesda, MD 20892 (Video Meeting).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 7, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–17677 Filed 8–12–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 15, 2020.

Open: 11:30 a.m. to 1:30 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: https://videocast.nih.gov/watch=38169, Bethesda, MD 20892 (Virtual Meeting).

Closed: 2:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, One Democracy Plaza, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kay Wanke, Acting Executive Secretary, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Boulevard, One Democracy Plaza, Bethesda, MD 20817, (301) 402–0036, *kay.wanke@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nih.gov/ninr/a_advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 10, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–17743 Filed 8–12–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meeting of the the Substance Abuse and Mental Health Services Administration's National Advisory Council

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given of the meeting on September 3, 2020, of the Substance Abuse and Mental Health Services Administration's (SAMHSA) National Advisory Council (SAMHSA NAC). The meeting is open to the public and can only be accessed virtually. Agenda with call-in information will be posted on the SAMHSA website prior to the meeting at: *https://www.samhsa.gov/about-us/advisory-councils/meetings.* The meeting will include remarks and discussion with the Assistant Secretary for Mental Health and Substance Use; updates on SAMHSA priorities and initiatives, and a council discussion on clinical trends and emerging national issues with SAMHSA NAC members.

DATES: September 3, 2020, 1:00 p.m. to approximately 5:00 p.m. (ET)/Open.

ADDRESSES: The meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Carlos Castillo, Committee Management Officer and Designated Federal Official, SAMHSA National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail), Telephone: (240) 276–2787, Email: *carlos.castillo@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: The SAMHSA NAC was established to advise the Secretary, Department of Health and Human Services (HHS), and the Assistant Secretary for Mental Health and Substance Use, SAMHSA, to improve the provision of treatments and related services to individuals with respect to substance use and to improve prevention services, promote mental health, and protect legal rights of individuals with mental illness and individuals who are substance users.

Interested persons may present data, information, or views orally or in writing, on issues pending before the Council. Written submissions must be forwarded to the contact person no later than seven days before the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations must notify the contact person by August 26, 2020. Up to three minutes will be allotted for each presentation, and as time permits.

To obtain the call-in number, access code, and/or web access link; submit written or brief oral comments; or request special accommodations for persons with disabilities, please register on-line at: *https://snacregister.samhsa.gov/MeetingList.aspx,* or communicate with SAMHSA's Committee Management Officer, CAPT Carlos Castillo.

Meeting information and a roster of Council members may be obtained either by accessing the SAMHSA Council's website at *http://www.samhsa.gov/about-us/advisory-councils/* or by contacting Carlos Castillo.

Council Name: Substance Abuse and Mental Health Services Administration National Advisory Council.

(Authority: Public Law 92–463)

Dated: August 7, 2020.

Carlos Castillo,

Committee Management Officer, SAMHSA.

[FR Doc. 2020–17683 Filed 8–12–20; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0021]

Agency Information Collection Activities: Crew Member's Declaration

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than October 13, 2020) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0021 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Crew Member's Declaration.

OMB Number: 1651–0021.

Form Number: CBP Form 5129.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Form 5129.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: CBP Form 5129, *Crew Member's Declaration,* is a declaration made by crew members listing all goods acquired abroad which are in his/her possession at the time of arrival in the United States. The data collected on CBP Form 5129 is used for compliance with currency reporting requirements, supplemental immigration documentation, agricultural quarantine matters, and the importation of merchandise by crew members who complete the individual declaration. This form is authorized by 19 U.S.C. 1431 and provided for by 19 CFR 4.7, 4.81, 122.83, 122.84, and 148.61–148.67. CBP Form 5129 is accessible at *https://www.cbp.gov/sites/default/files/assets/documents/2018-Dec/CBP%20Form%205129.pdf.*

Estimated Number of Respondents: 6,000,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 6,000,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 996,000.

Dated: August 10, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–17736 Filed 8–12–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0058]

Agency Information Collection Activities: Documents Required Aboard Private Aircraft

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection 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 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than October 13, 2020) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0058 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Documents Required Aboard Private Aircraft.

OMB Number: 1651–0058.

Form Number: None.

Current Actions: CBP proposes to extend the expiration date of this information collection. There is no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Individuals.

Abstract: In accordance with 19 CFR 122.27(c), a commander of a private aircraft arriving in the U.S. must present several documents to CBP officers for inspection. These documents include: (1) A pilot certificate/license; (2) a medical certificate; and (3) a certificate of registration. CBP officers use the information on these documents as part of the inspection process for private aircraft arriving from a foreign country. This presentation of information is authorized by 19 U.S.C. 1433, as amended by Public Law 99–570.

Estimated Number of Respondents: 120,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 120,000.

Estimated Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 1,992.

Dated: August 10, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–17735 Filed 8–12–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7027–N–27; OMB Control No. 2502–0086]

60-Day Notice of Proposed Information Collection: Monthly Report of Excess Income and Annual Report of Uses of Excess Income

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 13, 2020.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Monthly Report of Excess Income and Annual Report of Uses of Excess Income.

OMB Approval Number: 2502–0086.

OMB Expiration Date: 2/29/2020.

Type of Request: Reinstatement, with change, of previously approved collection for which approval has expired.

Form Number: N/A (*Pay.gov*).

Description of the need for the information and proposed use: Project owners are permitted to retain excess income for projects under terms and conditions established by HUD. Owners must submit a written request to retain some or all of their excess income. The request must be submitted at least 90 days before the beginning of each fiscal year, or 90 days before any other time during a fiscal year that the owner plans to begin retaining excess income for that fiscal year. HUD uses the information to ensure that required excess rents are remitted to the Department and/or retained by the owner for project use.

Respondents (*i.e., affected public*): Business or other for-profit. Project owners with loans subsidized using the Section 236 program (Business or other for-profit).

Estimated Number of Respondents: 835.

Estimated Number of Responses: 10,855.

Frequency of Response: 12.

Average Hours per Response: 0.25.

Total Estimated Burden: 3,131 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

The Acting Assistant Secretary for Housing—Federal Housing Commissioner, Len Wolfson, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the Federal Register Liaison for HUD, for purposes of publication in the ***Federal Register****.*

Dated: August 10, 2020.

Nacheshia Foxx,

Federal Register Liaison for the Department of Housing and Urban Development.

[FR Doc. 2020–17718 Filed 8–12–20; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2020–0028; FXES111X0500000–XXX–FF05E00000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for Karner Blue Butterfly and Frosted Elfin in the Albany Pine Bush Preserve, Albany, Colonie and Guilderland, New York; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from the Albany Pine Bush Preserve Commission (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed endangered Karner blue butterfly incidental to otherwise lawful activities associated with expansion of an existing trail system and routine property maintenance and management activities within the Albany Pine Bush Preserve. The applicant also seeks take coverage for the frosted elfin butterfly, listed as threatened by the State of New York, should it become federally listed in the future. The applicant proposes a conservation program to minimize and mitigate the impacts of unavoidable incidental take of the two species, as described in its habitat conservation plan (HCP). We invite public comment on the application, which includes the applicant's proposed HCP, and the Service's preliminary determination that the covered actions and incidental take

which may occur under this proposed HCP, if implemented, qualifies as ''low effect,'' and therefore our issuance of the requested ITP authorizing the take would be categorically excluded from further review under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review. We provide this notice to seek comments from the public and Federal, Tribal, State, and local governments.

DATES: We will accept comments received or postmarked on or before September 14, 2020.

ADDRESSES:

Reviewing documents: You may obtain copies of the application, including the HCP and the draft environmental action statement, in Docket No. FWS–R5–ES–2020–0028 at *http://www.regulations.gov.*

Submitting Comments: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R5–ES–2020–0028.
- *U.S. Mail:* Public Comments Processing; Attn: Docket No. FWS–R5–ES–2020–0028; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

For additional information about submitting comments, see Request for Public Comments and Public Availability of Comments under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Noelle Rayman-Metcalf, by telephone at 607–753–9334, or by email at *Noelle_rayman@fws.gov.* Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and its implementing regulations prohibit the ''take'' of animal species listed as endangered or threatened (16 U.S.C. 1538). Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct'' (16 U.S.C. 1532). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (16 U.S.C. 1539). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

Applicant's Proposed Project

The applicant requests a 20-year ITP to take two covered species, the endangered Karner blue butterfly and the frosted elfin (should it become federally listed in the future). The applicant determined that unavoidable take is reasonably certain to occur incidental to the proposed construction of 2.7 miles of trail and routine property maintenance and management activities that will affect approximately 1.94 acres (ac) of occupied or suitable habitat for the covered species.

The conservation program in the applicant's proposed HCP is designed to avoid, minimize, and mitigate the impacts of covered activities on the covered species, and is intended to complement ongoing conservation efforts for the covered species in New York State. The HCP proposes establishment and ongoing maintenance of approximately 6 ac of wild blue lupine to increase breeding and foraging habitat for the covered species to offset the anticipated impacts of the taking.

National Environmental Policy Act

The issuance of an ITP is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 *et seq.*). The Service has made a preliminary determination that the impact of the covered actions and the incidental take likely to result from the applicant's project, including expansion of the existing trail system, routine property maintenance and management activities, and the proposed conservation program, would individually and cumulatively have a minor or negligible effect on the Karner blue butterfly, the frosted elfin, and the environment. Therefore, we have preliminarily concluded the covered actions and incidental take which may occur under this proposed HCP, if implemented, qualifies as ''low effect,'' and therefore our issuance of the requested ITP authorizing the take would be categorically excluded from further review under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect ITP is one in which covered actions and incidental take in accordance with the HCP would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether the permit application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(l)(B) of the ESA have been met. If met, the Service will issue the requested ITP to the applicant.

Request for Public Comments

The Service invites the public to comment on the proposed HCP and draft environmental action statement during a 30-day public comment period (see **DATES**). You may submit comments by one of the methods shown under **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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1539(c)) and NEPA regulation 40 CFR 1506.6.

Sharon Marino,

Assistant Regional Director, Ecological Services.

[FR Doc. 2020–17725 Filed 8–12–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[20XD4523WS, DS61200000, DWSN00000.000000, DP61202]

Draft Invasive Species Strategic Plan; Tribal and Alaska Native Corporation Consultations, Public Listening Sessions and Request for Public Comments

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of planning document with teleconference consultations with Tribes and Alaska Native Corporations, teleconference public listening sessions and public comment.

SUMMARY: Pursuant to the John D. Dingell Jr., Conservation, Management and Recreation Act of 2019 (Pub. L. 116–9), notice is hereby given of the development of the U.S. Department of the Interior Invasive Species Strategic Plan.

DATES: A teleconference consultation with Tribes will be held on September 17, 2020 at 4:00 p.m. Eastern. A teleconference consultation with Alaska Native Corporations will be held on September 22 at 4:00 p.m. Eastern. RSVPs are required to participate in these sessions and must be received by 5:00 p.m. Eastern, September 14. Teleconference listening sessions for other interested parties and the public will be held on September 24 at 4:00 p.m. Eastern and September 28 at 4:00 p.m. Eastern. RSVPs are required to participate and must be received by 5:00 p.m. Eastern, September 21. Written comments must be submitted online or by mail by 11:59 p.m. Eastern, October 9, 2020. For more information, including on how to RSVP, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Written comments will be accepted online only at *http://www.regulations.gov* by entering ''DOI–2020–0007'' in the Search bar and clicking ''Search'' or by mail to U.S. Department of the Interior, Office of Policy Analysis—Mailstop 3530, ATTN: Invasive Species Comments, 1849 C Street NW, Washington DC, 20240.

SUPPLEMENTARY INFORMATION: The Department of the Interior's (Interior) Draft Invasive Species Strategic Plan (Plan) and other related information are posted on Interior's website at *https://www.doi.gov/ppa/doi-invasive-species-strategic-plan.*

To RSVP for the Tribal, Alaska Native Corporation, or public teleconference sessions, please enter your contact information into the following form: *https://tinyurl.com/tfgu83p.* Call-in details for the sessions will be provided to registered participants in advance of the calls. Consultations with Tribes and Alaska Native Corporations are also being noticed through Dear Leader Letters.

The John D. Dingell, Jr. Conservation, Management and Recreation Act (Act) (Pub. L. 116–9) was enacted on March 12, 2019. Title VII Section 7001 of the Act directs relevant Secretaries to take actions concerning invasive species; this includes direction to each Secretary concerned to develop a strategic plan for the implementation of the invasive species program to achieve, to the maximum extent practicable, a substantive annual net reduction of invasive species populations or infested acreage on land or water managed by the Secretary concerned. The Act directed that the Plan be developed in coordination with affected eligible States, political subdivisions of eligible States, in consultation with Federally recognized Indian tribes and in accordance with the priorities of Governors of eligible States. The Act is available at: *https://www.congress.gov/116/bills/s47/BILLS-116s47enr.pdf.*

To inform the Plan's development, Interior held a series of teleconference listening sessions in November 2019 with Federally recognized Indian tribes, State, county and territorial governments, Alaska Native Corporations and the Native Hawaiian Community. The purpose of the sessions was for Interior to gain perspectives on topics including, but not limited to, priority invasive species of greatest concern to address to protect valued natural, economic and cultural resources; opportunities to address invasive species at a meaningful scale to achieve effective outcomes; interjurisdictional efforts needed to prevent, detect, eradicate and control invasive species; opportunities to fulfill Trust responsibilities; and specific areas of interest to emphasize in the Plan. Written comments were also accepted. Input received at the onset of the Plan's development informed the Plan's mission, vision, goals, objectives and strategies.

The Plan is intended to: Comply with the Act's mandate for Interior to develop an Interior-wide Plan; be broad enough to reflect Interior's depth and breadth of work underway; coordinate with and build upon existing efforts; complement existing plans, *e.g.,* bureau and interagency plans, and reporting efforts; be implemented in collaboration with States, Tribes, territories, local governments, other Federal agencies and others, as appropriate, and be implemented within existing authorities and available resources.

The scope of the Plan includes goals, objectives, strategies and metrics; ongoing work and opportunities to focus on emerging priorities; actions both on Interior-managed lands and waters and on lands and waters managed by others but for which Interior has a mandate; a spectrum of strategies, invasive species and scales of implementation; and a five-year timeline, beginning in Fiscal Year 2021, to be reviewed every five years.

Consultation and teleconference listening sessions on the draft Plan, together with any written comments received, will aid Interior in refining the Plan.

An overview of the Plan and process to develop it will be provided during the teleconference sessions. The majority of the time will be made available for comment. Input to gain on the draft Plan includes but is not limited to the following topics:

- Are the mission, vision, goals, objectives and strategies clear as written, and if not, what clarifications should be made?
- Do the goals, objectives and strategies build in sufficient flexibility for implementation to meet the needs of ongoing and emerging efforts, and if not, how should they be adjusted?
- Do the goals, objectives and strategies emphasize the importance of collaboration to advance mutual priorities of Tribal, State, local and territorial governments and partners, and if not, how should they be adjusted?
- Based on the objectives, what metrics would be most useful to track progress against the objectives?
- Are there any major omissions in the draft that should be addressed, and if so, what are they?

For further information, contact Hilary Smith, Senior Advisor for Invasive Species, (202) 763–3118; email: *invasives_strategic_plan@ios.doi.gov.*

Note: As part of the teleconference sessions, participants will be required to provide their name, title, organization and telephone number to the operator before being connected.

Please note the following URLs associated with this **Federal Register** Notice:

1. John D. Dingell, Jr. Conservation, Management and Recreation Act: *https://www.congress.gov/116/bills/s47/BILLS-116s47enr.pdf*
2. Draft Plan: *https://www.doi.gov/ppa/doi-invasive-species-strategic-plan*
3. Regulations website for submitting written comments: *https://www.regulations.gov*

4. Required registration for consultation and listening sessions: *https://tinyurl.com/tfgu83p*

Public Availability of Comments

Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: John D. Dingell, Jr. Conservation, Management and Recreation Act (Public Law 116–9).

Hilary Smith,

Senior Advisor for Invasive Species, Office of Policy Analysis, Office of the Secretary.

[FR Doc. 2020–17740 Filed 8–12–20; 8:45 am]

BILLING CODE 4334–63–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–650–651 (Preliminary)]

Phosphate Fertilizers From Morocco and Russia

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of phosphate fertilizers from Morocco and Russia, provided for in 3103.11.00; 3103.19.00; 3103.90.00; 3105.10.00; 3105.20.00; 3105.30.00; 3105.40.00; 3105.40.00; 3105.51.00; 3105.59.00; 3105.60.00; and 3105.90.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the governments of Morocco and Russia.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under § 703(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under § 705(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On June 26, 2020, The Mosaic Company, Plymouth, Minnesota filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of phosphate fertilizers from Morocco and Russia. Accordingly, effective June 26, 2020, the Commission instituted countervailing duty investigation Nos. 701–TA–650–651 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference through written submission to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 6, 2020 (85 FR 40319). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference through written questions, submissions of opening remarks and written testimony, written responses to questions, and postconference briefs. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to § 703(a) of the Act (19 U.S.C. 1671b(a)). It completed and filed its determinations in these investigations on August 17, 2020. The views of the Commission are contained in USITC Publication 5105 (August 2020), entitled *Phosphate Fertilizers from Morocco and Russia: Investigation Nos. 701–TA–650–651 (Preliminary).*

By order of the Commission.

Issued: August 10, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–17726 Filed 8–12–20; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 85 FR 44505, July 23, 2020.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–986–987 (Third Review)]

Ferrovanadium From China and South Africa; Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty orders on ferrovanadium from China and South Africa would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on January 2, 2020 (85 FR 122) and determined on April 6, 2020 that it would conduct expedited reviews (85 FR 43258, July 16, 2020).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on August 7, 2020. The views of the Commission are contained in USITC Publication 5099 (August 2020), entitled *Ferrovanadium from China and South Africa: Investigation Nos. 731–TA–986–987 (Third Review).*

By order of the Commission.

Issued: August 7, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–17681 Filed 8–12–20; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

[OMB Number 1121–0149]

Agency Information Collection Activities; Proposed Collection Comments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: National Survey of Prosecutors (NSP)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics (BJS), 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 October 13, 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 George Browne, Statistician, Prosecution and Judicial Statistics Unit, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *George.Browne@usdoj.gov;* telephone: 202–307–1618).

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 Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement of the National Survey of Prosecutors.

(2) *The Title of the Form/Collection:* 2020 National Survey of Prosecutors.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is NSP–20. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be chief state prosecutors or their staff. *Abstract:* Among other responsibilities, the Bureau of Justice Statistics is charged with collecting data regarding the prosecution of crimes by state and federal offices. This information collection is a survey of local prosecutor offices that handles criminal cases in state courts. The Bureau of Justice Statistics (BJS) proposes to implement the next iteration of the National Survey of Prosecutors (NSP). Local prosecutors occupy a central role in a criminal justice system seeking to ensure justice is served. Prosecutors represent the local government in deciding who is charged with a crime, the type and number of charges filed, whether or not to offer a plea, and providing sentencing recommendations for those convicted of crimes. Since 1990, the NSP has been the only recurring national statistical program that captures the administrative and operational characteristics of the prosecutorial function in the State criminal justice system. The NSP will gather national statistics on local prosecutor office staffing and services, budgets and caseloads. In addition, this study will collect data on emerging topics such as provision of victim services, utilization of diversion programs and specialty courts and services provided on tribal lands by local prosecutor offices. These data will allow BJS to conduct trend analyses and comparisons with historical data, where available, and provide descriptive statistics on emerging crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* BJS will sample approximately 750 offices from the estimated 2,400 prosecutor offices across the U.S. The sample will include a census of all prosecutor offices located in counties of 500,000 or more (N=145 offices), and a sample proportionate to size for counties with less than 500,000 residents (N=605 offices). Based on cognitive interview testing of 24 respondents, an average of 80 minutes per respondent was needed to complete form NSP–19, including time to review materials and conduct data quality follow-up.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden is approximately 1,000 burden hours for all the jurisdictions surveyed.

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: August 9, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–17688 Filed 8–12–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0064]

Agency Information Collection Activities; Proposed Collection Comments Requested; Extension of a Currently Approved Collection: Annual Parole Survey, Annual Probation Survey

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, 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 30 days until September 14, 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.

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 Bureau of Justice Statistics, including whether the information will have practical utility;
— Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
— Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
— Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection

(2) *The Title of the Form/Collection:* Annual Parole Survey, Annual Probation Survey

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form numbers for the questionnaire are CJ–7 Annual Parole Survey; CJ–8 Annual Probation Survey; CJ–8a Annual Probation Survey (Short Form). The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State departments of corrections or state probation and parole authorities. Others: The Federal Bureau of Prisons, city and county courts and probation offices for which a central reporting authority does not exist. For the CJ–7 form, the affected public consists of 52 respondents including 50 central reporters, the District of Columbia, and the Federal Bureau of Prisons responsible for keeping records on parolees. For the CJ–8 form, the affected public includes 360 reporters including 40 state respondents, the District of Columbia, the Federal Bureau of Prisons, and 318 from local authorities responsible for keeping records on probationers. For the CJ–8A form, the affected public includes 448 reporters who are all local authorities responsible for keeping records on probationers. The Annual Parole Survey and Annual Probation surveys have been used since 1977 to collect annual yearend counts and yearly movements of community corrections populations; characteristics of the community supervision population, such as gender, racial composition, ethnicity, conviction status, offense, and supervision status. In 2020, respondents will be asked a few questions about the COVID–19 pandemic and how it affected their agency.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 860 respondents total; 412 with an averaged time of 1.75 hours for response and 448 with an average time 0.625 hours to respond. 860 respondents will be asked additional COVID–19 questions with an average time to complete of 0.33 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There is an estimated 1,001 total burden hours associated with this collection, with an additional 287 hours in 2020 for the COVID–19 questions. The total burden for the 2020 data collection is 1,288.

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: August 9, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–17690 Filed 8–12–20; 8:45 am]

BILLING CODE 4410–18–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1051; NRC–2018–0052]

Holtec International HI-STORE Consolidated Interim Storage Facility Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental impact statement; public comment meetings.

SUMMARY: On March 20, 2020, the U.S. Nuclear Regulatory Commission (NRC) published in the **Federal Register** a notice issuing the draft Environmental Impact Statement (EIS) for Holtec International's (Holtec's) application to construct and operate a consolidated interim storage facility (CISF) for spent nuclear fuel and Greater-Than Class C waste, along with a small quantity of mixed oxide fuel. The NRC is announcing four public comment webinars to receive comments on the draft report. The meetings will allow interested members of the public to submit their comments.

DATES: The NRC staff will hold webinars on August 20, 2020, August 25, 2020, August 26, 2020, and September 2, 2020. The staff will present the findings of the draft report and will receive public comments during transcribed public meetings. Members of the public are invited to submit comments by September 22, 2020. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2018–0052. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, ATTN: Program Management, Announcements and Editing Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Email comments to: Holtec-CISFEIS@nrc.gov.*

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

FOR FURTHER INFORMATION CONTACT: Jill Caverly, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC, 20555–0001; telephone: 301–415–7674; email: *Jill.Caverly@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0052 when contacting the NRC about

the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0052.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' The draft EIS can be found by searching for ADAMS Accession No. ML20069G420. For problems with ADAMS, please contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *Project web page:* Information related to the Holtec HI-STORE CISF project can be accessed on the NRC's Holtec HI–STORE CISF web page at *https://www.nrc.gov/waste/spent-fuel-storage/cis/holtec-international.html.* Scroll down to Environmental Impact Statement, Draft Report for Comment.
- *Public Libraries:* A copy of the staff's draft EIS can be accessed at the following public libraries (library access and hours are determined by local policy):
- Carlsbad Public Library, 101 S Halagueno Street, Carlsbad, NM 88220
- Hobbs Public Library, 509 N Shipp St., Hobbs, NM 88240
- Roswell Public Library, 301 N Pennsylvania, Roswell, NM 88201

B. Submitting Comments

Please include Docket ID NRC–2018–0052 in your comment submission.

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

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Meeting Information

On March 20, 2020, the NRC published in the **Federal Register** (85 FR 16150), the availability of a draft EIS for Holtec's proposed CISF for spent nuclear fuel and requested public comments on the draft report. The NRC is announcing that staff will hold four public webinars. The webinars will be held online at the webinar address for video of the staff's presentation and all audio will be through the telephone line. The telephone line will also be for members of the public to submit comments. A court reporter will be recording all comments received during the webinar. The dates and times for the public webinars follow:

Meeting	Date	Time	Webinar information
Public Webinar ..	August 20, 2020 ...	6:00 p.m.–9:00 p.m. (ET) ..... 4:00 p.m.–7:00 p.m. (MT)	*Webinar (video):* Event address: *https://usnrc.webex.com/.* Event number: 199 831 2299. Event password: HOLTEC. *Telephone access (audio):* Phone number: 888–566–6509. Passcode: 1904459.
Public Webinar ..	August 25, 2020 ...	2:00 p.m.–5:00 p.m. (ET) ..... 12:00 noon–3:00 p.m. (MT)	*Webinar (video):* Event address: *https://usnrc.webex.com/.* Event number: 199 973 2733. Event password: HOLTEC. *Telephone access:* (audio) Phone number: 1–888–566–6509. Passcode: 1904459.
Public Webinar ..	August 26, 2020 ...	6:00 p.m.–9:00 p.m. (ET) ..... 4:00 p.m.–7:00 p.m. (MT)	*Webinar (video):* Event address: *https://usnrc.webex.com/.* Event number: 199 278 6216. Event password: HOLTEC. *Telephone access: (audio):* Phone number: 888–566–6509. Passcode: 1904459.
Public Webinar ..	September 2, 2020	11:00 a.m.–2:00 p.m. (ET) ..... 9:00 a.m.–12 noon (MT).	*Webinar (video):* Event address: *https://usnrc.webex.com/.* Event number: 199 183 5099. Event password: HOLTEC. *Telephone access (audio):* Phone number: 888–566–6509. Passcode: 1904459.

Persons interested in attending these meeting should check the NRC's Public Meeting Schedule web page at *https://www.nrc.gov/pmns/mtg* for additional information, agendas for the meetings, and access information for the webinar.

Dated: August 6, 2020.

For the Nuclear Regulatory Commission.

Jessie M. Quintero,

Acting Chief, Environmental Review Materials Branch, Division of Rulemaking, Environmental and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2020–17536 Filed 8–12–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0162; Report of Medical Examination of Person Electing Survivor Benefits, OPM 1530

AGENCY: Office of Personnel Management.

ACTION: 30-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 request, OPM 1530, Report of Medical Examination of Person Electing Survivor Benefits.

DATES: Comments are encouraged and will be accepted until September 14, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to: *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, 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 via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0162) was previously published in the **Federal Register** on April 13, 2020 at 85 FR 20532, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. 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 the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

OPM Form 1530 is used to collect information regarding an annuitant's health so that OPM can determine whether the insurable interest survivor benefit election can be allowed.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.
Title: Report of Medical Examination of Person Electing Survivor Benefits.
OMB Number: 3206–0162.
Frequency: On occasion.
Affected Public: Individual or Households.
Number of Respondents: 500.
Estimated Time per Respondent: 90 minutes.
Total Burden Hours: 750 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–17685 Filed 8–12–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from January 1, 2020 to January 31, 2020.

FOR FURTHER INFORMATION CONTACT: Julia Alford, Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/.* OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during January 2020.

Schedule B

No Schedule B Authorities to report during January 2020.

Schedule C

The following Schedule C appointing authorities were approved during January 2020.

Agency name	Organization name	Position title	Authorization number	Effective date
DEPARTMENT OF AGRICULTURE	Office of the Under Secretary for Farm Production and Conservation.	Policy Advisor	DA200035	01/09/2020
	Office of Under Secretary for Natural Resources and Environment.	Senior Policy Advisor	DA200021	01/10/2020

Agency name	Organization name	Position title	Authorization number	Effective date
	Office of the Assistant Secretary for Congressional Relations.	Director of Intergovernmental Affairs.	DA200042	01/22/2020
	Farm Service Agency	State Executive Director—Tennessee.	DA200040	01/23/2020
DEPARTMENT OF COMMERCE	Bureau of Industry and Security.	Senior Advisor	DC200059	01/30/2020
	Office of Business Liaison	Senior Advisor for Policy and Engagement.	DC200048	01/31/2020
	Office of Legislative and Intergovernmental Affairs.	Confidential Assistant	DC200014	01/31/2020
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Special Assistant	DC200050	01/17/2020
	Office of the Chief of Staff	Senior Advisor	DC200003	01/17/2020
	Office of the Deputy Secretary.	Senior Advisor	DC200044	01/22/2020
	Office of the General Counsel	Confidential Assistant	DC200019	01/27/2020
		Counsel (2)	DC200028	01/03/2020
			DC200021	01/31/2020
	Office of White House Liaison	Confidential Assistant	DC200030	01/03/2020
		Director, Office of White House Liaison.	DC200043	01/31/2020
DEPARTMENT OF DEFENSE	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant for Legislative Affairs.	DD200058	01/14/2020
	Office of the Deputy Under Secretary for Policy.	Deputy Assistant Secretary of Defense China.	DD200063	01/14/2020
	Washington Headquarters Services.	Defense Fellow	DD200059	01/27/2020
DEPARTMENT OF EDUCATION	Office of the General Counsel	Confidential Assistant	DB200024	01/09/2020
DEPARTMENT OF ENERGY	Office of the Assistant Secretary for International Affairs.	Deputy Chief of Staff	DE200045	01/06/2020
	Office of the Assistant Secretary for Fossil Energy.	Senior Advisor	DE200056	01/16/2020
	Office of the Assistant Secretary for Energy Efficiency and Renewable Energy.	Special Assistant	DE200057	01/16/2020
ENVIRONMENTAL PROTECTION AGENCY	Office of the Assistant Administrator for Research and Development.	Senior Science Advisor	EP200027	01/13/2020
	Office of the Administrator	Special Advisor for Operations.	EP200028	01/22/2020
	Office of the Executive Secretariat.	Attorney-Advisor	EP200030	01/22/2020
	Region IV—San Francisco, California.	Senior Advisor for Policy and Congressional Affairs.	EP200023	01/24/2020
EXPORT-IMPORT BANK	Office of the Chairman	Special Advisor and Deputy Scheduler.	EB200009	01/30/2020
GENERAL SERVICES ADMINISTRATION	Office of Strategic Communication.	Speechwriter	GS200024	01/23/2020
	Office of Congressional and Intergovernmental Affairs.	Congressional Policy Analyst	GS200025	01/30/2020
		Policy Advisor	GS200026	01/30/2020
DEPARTMENT OF HEALTH AND HUMAN SERVICES	Centers for Medicare and Medicaid Services.	Senior Advisor	DH200011	01/10/2020
	Office of Intergovernmental and External Affairs.	Regional Director, Denver, Colorado, Region VIII.	DH200049	01/10/2020
	Office of the Assistant Secretary for Preparedness and Response.	Senior Advisor	DH200051	01/27/2020
	Office of the General Counsel	Advisor and Legal Counsel	DH200047	01/07/2020
	Office of the Secretary	Deputy Scheduler	DH200054	01/03/2020
		Advisor for Value-Based Transformation.	DH200059	01/16/2020
DEPARTMENT OF HOMELAND SECURITY	Federal Emergency Management Agency.	Deputy Press Secretary	DM200116	01/28/2020
	Office of Countering Weapons of Mass Destruction.	Senior Advisor	DM200117	01/27/2020
	Office of the Assistant Secretary for Public Affairs.	Director of Strategic Communications.	DM200038	01/02/2020
		Press Secretary	DM200083	01/09/2020

Agency name	Organization name	Position title	Authorization number	Effective date
		Speechwriter	DM200102	01/09/2020
	Office of the General Counsel	Oversight Counsel	DM200097	01/09/2020
	Office of Citizenship and Immigration Services.	Senior Advisor (3)	DM200023	01/02/2020
			DM200081	01/02/2020
			DM200091	01/08/2020
	Office of Customs and Border Protection.	Assistant Press Secretary	DM200098	01/09/2020
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	Office of Community Planning and Development.	Senior Advisor (2)	DU200039	01/03/2020
			DU200045	01/14/2020
	Office of Faith-Based and Community Initiatives.	Special Advisor	DU200038	01/24/2020
	Office of the General Counsel	Senior Counsel	DU200044	01/27/2020
DEPARTMENT OF JUSTICE	Office of the Attorney General	White House Liaison Officer and Special Assistant.	DJ200041	01/06/2020
	Office of Violence Against Women.	Advisor	DJ200017	01/23/2020
	Office of Justice Programs	Special Advisor for Policy and Communications.	DJ200065	01/30/2020
DEPARTMENT OF LABOR	Office of Congressional and Intergovernmental Affairs.	Regional Representative	DL200043	01/14/2020
	Office of the Secretary	Advance Representative	DL200052	01/24/2020
		Special Assistant (2)	DL200045	01/14/2020
			DL200042	01/30/2020
	Office of Wage and Hour Division.	Senior Policy Advisor	DL200051	01/23/2020
OFFICE OF MANAGEMENT AND BUDGET	Office of Information and Regulatory Affairs.	Senior Advisor	BO200019	01/27/2020
	Office of the Director	Confidential Assistant	BO200020	01/30/2020
OFFICE OF PERSONNEL MANAGEMENT	Office of Congressional, Legislative, and Intergovernmental Affairs.	Legislative Analyst	PM200012	01/10/2020
	Presidents Commission on White House Fellowships.	Confidential Assistant	PM200014	01/31/2020
SMALL BUSINESS ADMINISTRATION	Office of Investment and Innovation.	Senior Advisor	SB200006	01/22/2020
	Office of Communications and Public Liaison.	Digital Media Manager	SB200009	01/23/2020
SOCIAL SECURITY ADMINISTRATION	Office of the Commissioner	Special Assistant	SZ200013	01/31/2020
DEPARTMENT OF STATE	Bureau of Overseas Buildings Operations.	Senior Strategic Advisor	DS200033	01/16/2020
	Bureau of Legislative Affairs	Special Advisor	DS200036	01/22/2020
	Bureau of Global Public Affairs.	Special Advisor	DS200032	01/27/2020
DEPARTMENT OF TRANSPORTATION	Office of the Secretary	Deputy White House Liaison	DT200064	01/09/2020
	Office of the Assistant Secretary for Transportation Policy.	Special Assistant	DT200065	01/14/2020
	Office of the Executive Secretariat.	Special Assistant	DT200070	01/30/2020
DEPARTMENT OF THE TREASURY	Office of the Assistant Secretary (Legislative Affairs).	Special Advisor	DY200032	01/24/2020
	Secretary of the Treasury	Advance Representative	DY200030	01/10/2020
		Special Assistant	DY200041	01/30/2020
	Treasurer of the United States.	Senior Advisor	DY200033	01/16/2020
	Office of the Under Secretary for Terrorism and Financial Intelligence.	Special Assistant	DY200042	01/22/2020

The following Schedule C appointing authorities were revoked during January 2020.

Agency name	Organization name	Position title	Request number	Date vacated
DEPARTMENT OF AGRICULTURE	Rural Utilities Service	Policy Advisor	DA190080	01/03/2020
	Office of the Assistant Secretary for Congressional Relations.	Policy Advisor	DA180243	01/18/2020
	Office of Under Secretary for Natural Resources and Environment.	Staff Assistant	DA180169	01/18/2020
DEPARTMENT OF COMMERCE	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Confidential Assistant	DC190027	01/10/2020
DEPARTMENT OF HEALTH AND HUMAN SERVICES	Office of the General Counsel	Law Clerk	DH190201	01/06/2020
	Center for Consumer Information and Insurance Oversight.	Senior Advisor	DH170342	01/18/2020
	Office of the Secretary	Advisor	DH190089	01/18/2020
DEPARTMENT OF JUSTICE	Office of the Attorney General	Special Assistant	DJ190237	01/04/2020
	Office of Public Affairs	Public Affairs Specialist	DJ170102	01/18/2020
	Office of Legal Policy	Senior Counsel	DJ180106	01/31/2020
OFFICE OF THE SECRETARY OF DEFENSE	Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).	Special Assistant	DD190012	01/04/2020
	Office of the Assistant Secretary of Defense (Legislative Affairs).	Special Assistant (2)	DD190145	01/04/2020
			DD190174	01/04/2020
	Office of the Assistant to the Secretary of Defense (Public Affairs).	Special Assistant	DD190001	01/18/2020
	Washington Headquarters Services	Defense Fellow	DD190169	01/18/2020
DEPARTMENT OF THE ARMY	Office of the Assistant Secretary Army (Acquisition, Logistics and Technology).	Special Assistant	DW190032	01/18/2020
DEPARTMENT OF STATE	Office of the Counselor	Staff Assistant	DS180074	01/04/2020
DEPARTMENT OF THE ARMY	Office of the Assistant Secretary Army (Acquisition, Logistics and Technology).	Special Assistant to the Deputy Assistant Secretary of the Army (Strategy and Acquisition Reform).	DW190032	01/18/2020
DEPARTMENT OF VETERANS AFFAIRS	Veterans Benefits Administration	Deputy Chief of Staff	DV180036	01/04/2020
	Office of the General Counsel	Counselor (Healthcare)	DV190032	01/27/2020
ENVIRONMENTAL PROTECTION AGENCY	Office of the Associate Administrator for Congressional and Intergovernmental Relations.	House Relations Specialist	EP190061	01/11/2020
ENVIRONMENTAL PROTECTION AGENCY	Office of the Associate Administrator for Policy.	Senior for Science and Policy	EP190128	01/18/2020
EXPORT-IMPORT BANK	Office of the Chairman	Director of Scheduling	EB190008	01/18/2020
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION	Occupational Safety and Health Review Commission.	Confidential Assistant to the Chairman.	SH190003	01/03/2020
OFFICE OF PERSONNEL MANAGEMENT	Office of the Director	Senior Advisor to the Director	PM200007	01/04/2020
		Confidential Assistant to the Deputy Director.	PM190036	01/11/2020
	Office of Communications	Senior Press Officer	PM200001	01/24/2020
SMALL BUSINESS ADMINISTRATION	Office of Congressional and Legislative Affairs.	Deputy Assistant Administrator	SB180043	01/10/2020

(Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218)

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–17687 Filed 8–12–20; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0173; CSRS/FERS Designation of Beneficiary, Standard Form 3102

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 request (ICR), CSRS/FERS Designation of Beneficiary, Standard Form 3102.

DATES: Comments are encouraged and will be accepted until October 13, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

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

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public

is to make these submissions available for public viewing 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 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. 3206–0228). 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.

Standard Form 3102, CSRS/FERS Designation of Beneficiary, is used by an employee or annuitant covered under the Civil Service Retirement System or the Federal Employees Retirement System to designate a beneficiary to receive any lump sum due in the event of his/her death. The SF 3102 (FERS Designation of Beneficiary) is being combined with the SF 2808 (CSRS Designation of Beneficiary). This proposed version of SF 3102 will supersede all previous editions of SF 2808 and SF 3102.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: CSRS/FERS Designation of Beneficiary.

OMB Number: 3206–0173.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 5,888.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 1,472 hours.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–17686 Filed 8–12–20; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–211 and CP2020–239; Docket Nos. MC2020–212 and CP2020–240; MC2020–213 and CP2020–241; MC2020–214 and CP2020–242]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 17, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–211 and CP2020–239; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 155 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 7, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 17, 2020.

2. *Docket No(s).:* MC2020–212 and CP2020–240; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 156 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 7, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* August 17, 2020.

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[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

3. *Docket No(s).:* MC2020–213 and CP2020–241; *Filing Title:* USPS Request to Add First-Class Package Service Contract 111 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 7, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 17, 2020.

4. *Docket No(s).:* MC2020–214 and CP2020–242; *Filing Title:* USPS Request to Add Priority Mail Contract 647 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 7, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 17, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–17731 Filed 8–12–20; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89507; File No. SR–CBOE–2020–077]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5.34 (Order and Quote Price Protection Mechanisms and Risk Controls) in Connection With Sell Market Orders in No-Bid Series

August 7, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 5.34 (Order and Quote Price Protection Mechanisms and Risk Controls) in connection with sell market orders in no-bid series. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5.34(a)(1) in connection with the System's handling of a sell market orders in no-bid series. Specifically, if the System receives a sell market order in a series after it is open for trading with a national best bid (''NBB'') of zero, current Rule 5.34(a)(1)(A)(ii) provides that if the NBO in the series is greater than $0.50, then the System cancels or rejects the market order. The proposed rule change adds to Rule 5.34(a)(1)(A)(ii) that if the NBO in the series is greater than $0.50, then the System cancels or rejects the market order or routes the market order to PAR for manual handling, subject to a User's instructions. This proposed handling in consistent with order instructions a User may choose to apply to an order wherein, if the order is not eligible for electronic handling, the order routes to PAR for manual handling.[5] Current Rule 5.34(a)(1)(A)(ii), as written, does not specifically consider the case in which a User's order instructions would route an order to PAR when such order is not eligible for electronic processing because the NBO in the series is greater than $0.50.

The System, however, currently handles orders under these circumstances in accordance with the User instruction to route such an order for manual handling.[6] The proposed rule change codifies this behavior. The Exchange notes that Rule 5.34 was recently revised in connection with a technology migration. The rule filing that revised Rule 5.34 consolidated all order and quote price protection mechanisms and risk controls provisions from the pre-migration Exchange Rulebook into one single rule (current Rule 5.34) as well as harmonized Rule 5.34 with the corresponding rules of the Exchange's affiliated exchanges, Cboe EDGX Exchange, Inc. (''EDGX Options'') and Cboe C2 Exchange, Inc. (''C2'').[7] The Exchange's former rule provision regarding market orders in no-bid (offer) series provided that if the Exchange's best offer (*i.e.,* NBO) was greater than $0.50, the order would route to PAR if so instructed by the submitting firm.[8] The Exchange inadvertently omitted this specific handling process when it amended current Rule 5.34 in connection with the technology migration.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See e.g.* Rule 5.6(c), a ''Default'' order is an order a User designates for electronic processing, and which order (or unexecuted portion) routes to PAR for manual handling if not eligible for electronic processing.

[6] *See* Cboe U.S. Options FIX Specification (July 13, 2020) at 12, available at *https://cdn.cboe.com/resources/membership/US_Options_FIX_Specification.pdf.*

[7] *See* Securities Exchange Release No. 86923 (September 10, 2019), 84 FR 48664 (September 16, 2019) (SR–CBOE–2019–057).

[8] Former Rule 6.13(b)(vi)(B) provided that if the Exchange best offer in a no-bid series is greater than $0.50, then the order entry firm has the discretion to have the market order to sell via the order handling system pursuant to Rule 6.12 (which permitted a submitting firm to opt to route orders not eligible for electronic processing to a designated order management terminal or PAR Workstation).

[9] 15 U.S.C. 78f(b).

6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and national market system, as well as protect investors, because it will allow the System to handle orders in a manner that is consistent with the intent of a User's order instruction to route orders to PAR for manual handling that are not eligible for electronic processing, including when the NBO is greater than $0.50 in a no-bid (offer) series. Manual handling rather than cancellation of orders in these circumstances may provide these orders with additional execution opportunities. Additionally, the Exchange does not believe that the proposed rule change raises any new or novel issues for, nor will affect the protection of investors, because, less than a year ago, the Exchange's effective rules at the time included the same order handling provision.[12] The proposed rule change codifies current functionality in the Rules, which was inadvertently omitted in a previous rule filing, which additional transparency benefits investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will allow orders to route in accordance with a User's intended order instruction, and will apply equally to all Users' orders that are designated to route to PAR when ineligible for electronic processing.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change is not intended to address competitive issues, but rather conforms the Rules to current System functionality in a manner that is consistent with order instructions already available to Users. The Exchange additionally notes that the proposed rule change readopts rule language that had prior been in the Exchange's Rules up until less than a year ago.[13]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issue as the proposed rule is merely restating rule language that had previously been approved by the Commission in the Exchange Rules up until less than a year ago.[18] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new issues and will allow the Exchange to remedy its recent inadvertent omission without delay. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2020–077 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–077. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

[12] *See supra* note 7.

[13] *See id.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] *See supra* note 7.

[19] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–077 and should be submitted on or before September 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–17669 Filed 8–12–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89471; File No. SR–CboeBZX–2020–05]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Options Regulatory Fee

August 4, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 2020, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fees Schedule relating to the Options Regulatory Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reduce the Options Regulatory Fee (''ORF'') applicable to the Exchange's options platform (''BZX Options'') from $0.0002 per contract to $0.0001 per contract, effective August 3, 2020, in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

The ORF is assessed by the Exchange to each Member for options transactions cleared by the Member that are cleared by the Options Clearing Corporation (''OCC'') in the customer range, regardless of the exchange on which the transaction occurs.[3] In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a Member, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Member or non-Clearing Member that ultimately clears the transaction. With respect to linkage transactions, the Exchange reimburses its routing broker providing Routing Services for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of Member customer options business including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third-party service provider costs to support the day to day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, information technology, facilities and accounting. These indirect expenses are estimated to be approximately 6% of BZX Options' total regulatory costs for 2020. Thus, direct expenses are estimated to be approximately 94% of total regulatory costs for 2020. In addition, it is BZX Options' practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs.

The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs in a given year, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange also notifies Members of adjustments to the ORF via regulatory circular and/or Exchange Notice.[4] Based on the Exchange's most recent semi-annual review, the Exchange is proposing to reduce the amount of ORF that will be collected by the Exchange from $0.0002 per contract side to $0.0001 per contract side. The proposed decrease is based on the Exchange's estimated projections for its

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes ORF also applies to customer-range transactions executed during Global Trading Hours.

[4] The Exchange provides Members with such notice at least 30 calendar days prior to the effective date of the change. The Exchange notified Members of the proposed rate change for August 3, 2020 on July 1, 2020. *See* BZX Regulatory Circular RG20–042 ''Options Regulatory Fee Decrease and Discontinuation of Regulatory Circular'' and Exchange Notice, C2020070100 ''Cboe Options Exchanges Regulatory Fee Update Effective August 3, 2020.''

regulatory costs, which have decreased, balanced with recent options volumes, which has significantly increased. For example, total options contract volume in June 2020 was 82.2% higher than the total options contract volume in June 2019.[5] In fact, June 2020 was the highest options volume month in the history of U.S. equity options industry.[6] In particular, customer options volume across the industry has also significantly increased year to date. For example, total customer options contract volume in April 2020 was 50.27% higher than total customer volume in April 2019 and total customer options contract volume in May 2020, was 29.10% higher than total customer volume in May 2019. These expectations are estimated, preliminary and may change. There can be no assurance that the Exchange's final costs for 2020 will not differ materially from these expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward. The Exchange notes however, that when combined with the Exchange's other non-ORF regulatory fees and fines, the revenue being generated by ORF using the current rate results in revenue that is running in excess of the Exchange's estimated regulatory costs for the year.[7] Particularly, as noted above, the options market has seen a substantial increase in volume over the first half of the year, due in large part to the extreme volatility in the marketplace as a result of the COVID–19 pandemic. This unprecedented spike in volatility resulted in significantly higher volume than was originally projected by the Exchange (thereby resulting in substantially higher ORF revenue than projected). Moreover, in addition to projected reductions in regulatory expenses, the Exchange experienced further unanticipated reductions in costs, in connection with COVID–19 (*e.g.,* reduction in travel expenses).[8] The Exchange therefore proposes to decrease the ORF in order to ensure it does not exceed its regulatory costs for the year. Particularly, the Exchange believes that by decreasing the ORF, as amended, when combined with all of the Exchange's other regulatory fees and fines, would allow the Exchange to continue covering a material portion of its regulatory costs, while lessening the potential for generating excess revenue that may otherwise occur using the current rate.[9]

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act [11], which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because customer transactions will be subject to a lower ORF fee than the current rate. Moreover, the proposed reduction is necessary in order for the Exchange to not collect revenue in excess of its anticipated regulatory costs, in combination with other regulatory fees and fines, which is consistent with the Exchange's practices. The Exchange had designed the ORF to generate revenues that would be less than or equal to 75% of the Exchange's regulatory costs, which is consistent with the view of the Commission that regulatory fees be used for regulatory purposes and not to support the Exchange's business operations. As discussed above, however, after its semi-annual review of its regulatory costs and regulatory revenues, which includes revenues from ORF and other regulatory fees and fines, the Exchange determined that absent a reduction in ORF, it would be collecting revenue in excess of 75% of its regulatory costs. Indeed, the Exchange notes that when taking into account the recent options volume, coupled with the projected reduction in regulatory costs, it estimates the ORF will generate revenues that would cover more than the approximated 75% of the Exchange's projected regulatory costs. Moreover, when coupled with the Exchange's other regulatory fees and revenues, the Exchange estimates ORF to generate over 100% of the Exchange's projected regulatory costs. As such, the Exchange believes it's reasonable and appropriate to decrease the ORF amount from $0.0002 to $0.0001 per contract side.

The Exchange also believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all Members on all their transactions that clear in the customer range at the OCC. The Exchange believes the ORF ensures fairness by assessing higher fees to those Members that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. For example, there are costs associated with main office and branch office examinations (*e.g.,* staff and travel expenses), as well as investigations into customer complaints and the terminations of Registered persons. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* Member proprietary transactions) of its regulatory program.[13] Moreover, the Exchange notes that it has broad regulatory responsibilities with respect to its Members' activities, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity may require the Exchange to look at

[5] *See https://www.theocc.com/Newsroom/Press-Releases/2020/07-01-OCC-June-2020-Total-Volume-Up-Nearly-81-Perc.*

[6] *Id.* The previous record for highest U.S. equity options volume was March 2020. For further context, the Exchange notes that The Options Clearing Corporation total volume for March 2020 was up 62.8% as compared to March 2019.

[7] Consistent with Rule 15.2 (Regulatory Revenue), the Exchange notes that notwithstanding the excess ORF revenue collected to date, it has not used such revenue for nonregulatory purposes.

[8] The Exchange notes that in connection with proposed ORF rate changes, it provides the Commission confidential details regarding the Exchange's projected regulatory revenue, including projected revenue from ORF, along with a breakout of its projected regulatory expenses, including both direct and indirect allocations.

[9] The Exchange notes that its regulatory responsibilities with respect to Member compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

[13] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on Member proprietary transactions if the Exchange deems it advisable.

activity across all markets, such as reviews related to position limit violations and manipulation. Indeed, the Exchange cannot effectively review for such conduct without looking at and evaluating activity regardless of where it transpires. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'') [14] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to its Member's customer trading activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. The Exchange notes, however, the proposed change is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[14] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and paragraph (f) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CboeBZX–2020–057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CboeBZX–2020–057. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CboeBZX–2020–057, and should be submitted on or before September 3, 2020.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–17352 Filed 8–12–20; 8:45 am]

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89509; File No. SR–MEMX–2020–03]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend Rule 8.15 and To Add the Consolidated Audit Trail Industry Member Compliance Rules to the List of Minor Rule Violations in Rule 8.15.01

August 7, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2020, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to add the Consolidated Audit Trail (''CAT'') industry member compliance

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rules (''CAT Compliance Rules'') to the list of minor rule violations in Rule 8.15 and to make an additional change to paragraph (a) of Rule 8.15. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In order to implement the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan''), the Exchange codified the CAT Compliance Rules in Rules 4.5 through 4.16 as part of its initial Rules.[3] The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Act,[4] and each Plan Participant accordingly has adopted the same compliance rules as in Exchange Rules 4.5 through 4.16. The common compliance rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurate customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

Rule 8.15 provides for disposition of certain violations through assessment of fines in lieu of conducting a formal disciplinary proceeding. Rule 8.15.01, specifically, sets forth the list of specific Exchange Rules under which any member of the Exchange (''Member''), associated person of a Member, or registered or non-registered employee of a Member may be subject to a fine for violations of such Rules. The Exchange proposes to amend Rule 8.15.01 to add the CAT Compliance Rules in Rules 4.5 through 4.16 to the list of rules in Rule 8.15.01 eligible for disposition pursuant to a minor fine; specifically, under proposed Rule 8.15.01(h).[5] Proposed Rule 8.15.01(h) provides that for failures to comply with the Consolidated Audit Trail Compliance Rule requirements of Rules 4.5 through 4.16, the Exchange may impose a minor rule violation fine of up to $2,500. The Exchange may seek other disciplinary action for more serious violations.

The Exchange is coordinating with the Financial Industry Regulatory Authority, Inc. (''FINRA'') and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants' CAT Compliance Rules. The Commission recently approved a Rule 17d–2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant (''common members'').[6] Under the Rule 17d–2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d–2 Plan, responsibility for common members of multiple other Plan Participants and not a member of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to MEMX pursuant to the Rule 17d–2 Plan, the Exchange and FINRA have entered into a Regulatory Services Agreement (''RSA'') pursuant to which FINRA will assist the Exchange with conducting surveillance, investigation, examination, and enforcement activity in connection with the CAT Compliance Rules on the Exchange's behalf. The Exchange expects that the other exchanges will be entering into similar RSAs.

The Exchange notes that this proposal is based upon the FINRA filing to amend FINRA Rule 9217 in order to add FINRA's corresponding CAT Compliance Rules to FINRA's list of rules that are eligible for minor rule violation plan treatment.[7] The Exchange also notes that the New York Stock Exchange LLC (''NYSE'') submitted a filing to amend its Minor Rule Violation Plan (''MRVP'') to add its CAT Compliance Rules in a manner consistent with FINRA's proposal,[8] and other Plan Participants intend to submit the same. Thus, in order to achieve consistency with FINRA and the other Plan Participants, the Exchange proposes to adopt fines up to $2,500 in connection with minor rule fines for violations of the CAT Compliance Rules (Rules 4.5 through 4.16) in proposed Rule 8.15.01(h) under the Exchange's MRVP. In connection with FINRA's proposed amendment to FINRA Rule 9217 to make FINRA's CAT Compliance Rules MRVP eligible, FINRA has stated that it will apply the minor fines for CAT Compliance Rules in the same manner that FINRA has for its similar existing audit trail-related rules.[9] Accordingly, in order to promote regulatory consistency, the Exchange plans to do the same. Specifically, application of a minor fine with respect to CAT Compliance Rule violations will be guided by the same factors that FINRA references in its filing. However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;
- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;

[3] On May 4, 2020, the Commission approved the MEMX Form 1 application for registration as a national securities exchange. *See* Securities Exchange Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

[4] 17 CFR 242.613.

[5] FINRA's maximum fine for minor rule violations under FINRA Rule 9216(b) is $2,500. The Exchange will apply an identical maximum fine amount for eligible violations of Rules 4.5 through 4.16 to achieve consistency with FINRA and also amend its minor rule violation plan (''MRVP'') to include such fines. Like FINRA, the Exchange would be able to pursue a fine greater than $2,500 for violations of Rules 4.5 through 4.16 in a regular disciplinary proceeding or a letter of consent under Chapter 8 as appropriate. Any fine imposed in excess of $2,500 or not otherwise covered by Rule 19d–1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d–1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. *See* text accompanying notes 9–10, *infra.*

[6] *See* Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020).

[7] *See* Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR–FINRA–2020–013).

[8] *See* Securities Exchange Act Release No. 89123 (June 23, 2020), 85 FR 39016 (June 29, 2020) (SR–NYSE–2020–51).

[9] *See supra* note 7; *see* also FINRA Notice to Members 04–19 (March 2004) available at *https://www.finra.org/rules-guidance/notices/04-19* (providing specific factors used to inform dispositions for violations of OATS reporting rules).

• Whether the firm has taken remedial measures to correct the violations;
• Prior minor rule violations within the past 24 months;
• Collateral effects that the failure has on customers; and
• Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.[10]

Upon effectiveness of this rule change, the Exchange will publish a regulatory notice notifying its Members of the rule change and the specific factors that will be considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed rule change will result in a coordinated, harmonized approach to CAT Compliance Rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

In addition to the changes set forth above, the Exchange proposes to remove a sentence from its current Rule 8.15(a) given the possibility that it may cause confusion. Specifically, as set forth above, the provisions of Rule 8.15 are intended to provide for a way to resolve violations of Exchange Rules that are minor in nature. However, current paragraph (a) of Rule 8.15 states that the Exchange may, if no exceptional circumstances are present, impose a fine based upon a determination that there exists a pattern or practice of violative conduct. Given the fact that most violations involving a ''pattern or practice'' of violative conduct are not considered to be minor in nature, the Exchange believes this language might cause confusion and proposes to delete this sentence.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through a letter of consent if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. The Exchange believes the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct.[14] Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the CAT Compliance Rules in Rules 4.5 through 4.16 where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct. For the same reason, the Exchange believes its proposal to amend Rule 8.15(a) is consistent with the Act as it is designed to prevent fraudulent and manipulative acts and practices because it would remove a reference to an action brought under the Exchange's MRVP when the applicable violation is a pattern or practice violation.

In connection with the fine level specified in the proposed rule change, adding proposed Rule 8.15.01(h) to specifically provide that for violations of the CAT Compliance Rules in Rules 4.5 through 4.16 the Exchange may impose a fine not to exceed $2,500 would further the goal of transparency within the Exchange's rules. Adopting the same cap as FINRA for minor rule fines in connection with the CAT Compliance Rules would also promote regulatory consistency across self-regulatory organizations.

The Exchange further believes that the proposed amendment to Rule 8.15.01 is consistent with Section 6(b)(6) of the Act,[15] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange the ability to sanction minor or technical violations of Rules 4.5 through 4.16 pursuant to the Exchange's rules.

Finally, the Exchange also believes that the proposed change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[16] Rule 8.15 does not preclude a Member, associated person of a Member, or registered or non-registered employee of a Member from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with making the CAT Compliance Rules in Rules 4.5 through 4.16 eligible for a minor rule fine disposition, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct. Also, as stated above, the proposed rule

[10] *See id.*

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

[14] Pursuant to Rule 8.15(a) and (e), the Exchange has the discretion to impose a fine in lieu of commencing a disciplinary proceeding for a violation that is minor in nature. Rule 8.15(e) states specifically that nothing in Rule 8.15 requires the Exchange to impose a fine pursuant to Rule 8.15 with respect to the violation of any Rule included in any such listing.

[15] 15 U.S.C. 78f(b)(6).

[16] 15 U.S.C. 78f(b)(7) and 78f(d).

change is consistent with similar proposals recently filed by FINRA and NYSE, and other Plan Participants intend to submit the same.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2020–03 the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MEMX–2020–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2020–03 and should be submitted on or before September 3, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act [19] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[20] which governs minor rule violation plans.

As stated above, the Exchange proposes to add the CAT Compliance Rules to the list of minor rule violations in Rule 8.15 to be consistent with the approach FINRA has taken for minor violations of its corresponding CAT Compliance Rules.[21] The Commission has already approved FINRA's treatment of CAT Compliance Rules violations when it approved the addition of CAT Compliance Rules to FINRA's MRVP.[22] As noted in that order, and similarly herein, the Commission believes that Exchange's treatment of CAT Compliance Rules violations as part of its MRVP provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects that, as with FINRA, the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. Accordingly, the Commission believes the proposal raises no novel or significant issues. In addition, the Exchange proposes to amend Rule 8.15(a) to remove a reference to an action brought under the Exchange's MRVP when the applicable violation is a pattern or practice violation. The Commission believes that removal of such reference makes clear that a pattern or practice of violative conduct may require discipline beyond the scope of the Exchange's MRVP, and is therefore consistent with the Act.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[23] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds the CAT Compliance Rules to the Exchange's MRVP, harmonizes its application with FINRA's application of CAT Compliance Rules under its own MRVP, and amends Rule 8.15(a) to remove a pattern or practice of violative conduct from the Exchange's MRVP. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [24] and Rule 19d–1(c)(2) thereunder,[25] that the proposed rule change (SR–MEMX–2020–03) be, and hereby is, approved on an accelerated basis.

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[20] 17 CFR 240.19d–1(c)(2).

[21] As discussed above, the Exchange has entered into a Rule 17d–2 Plan and an RSA with FINRA with respect to the CAT Compliance Rules. The Commission notes that, unless relieved by the Commission of its responsibility, as may be the case under the Rule 17d–2 Plan, the Exchange continues to bear the responsibility for self-regulatory conduct and liability for self-regulatory failures, not the self-regulatory organization retained to perform regulatory functions on the Exchange's behalf pursuant to an RSA. *See* Securities Exchange Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031), note 93 and accompanying text.

[22] *See* SR–FINRA–2020–013.

[23] 15 U.S.C. 78s(b)(2).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 240.19d–1(c)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–17670 Filed 8–12–20; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16571 and #16572; Pennsylvania Disaster Number PA–00106]

Administrative Declaration of a Disaster for the Commonwealth of Pennsylvania

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 08/07/2020. Incident: Civil Unrest. Incident Period: 05/30/2020 through 06/08/2020.

DATES: Issued on 08/07/2020.

Physical Loan Application Deadline Date: 10/06/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 05/07/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Philadelphia

Contiguous Counties:

Pennsylvania: Bucks, Delaware, Montgomery.

New Jersey: Burlington, Camden, Gloucester.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	2.500
Homeowners Without Credit Available Elsewhere	1.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16571 F and for economic injury is 16572 0.

The States which received an EIDL Declaration # are Pennsylvania, New Jersey.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–17706 Filed 8–12–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16573 and #16574; Tennessee Disaster Number TN–00124]

Administrative Declaration of a Disaster for the State of Tennessee

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Tennessee dated 08/07/2020. Incident: Flooding. Incident Period: 07/01/2020.

DATES: Issued on 08/07/2020.

Physical Loan Application Deadline Date: 10/06/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 05/07/2021.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: McNairy.

Contiguous Counties:

Tennessee: Chester, Hardeman, Hardin.

Mississippi: Alcorn.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	2.500
Homeowners Without Credit Available Elsewhere	1.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16573 6 and for economic injury is 16574 0.

The States which received an EIDL Declaration # are Tennessee, Mississippi.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–17705 Filed 8–12–20; 8:45 am]

BILLING CODE 8026–03–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36424]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

Union Pacific Railroad Company (UP), a Class I railroad, has filed a verified notice of exemption under 49 CFR 1180.2(d)(8) for the acquisition of temporary trackage rights, for overhead operations, over approximately 566.6 miles of rail line owned by BNSF Railway Company (BNSF) between milepost 737.3 on BNSF's Needles Subdivision near Daggett, Cal., and milepost 191.6 on BNSF's Phoenix Subdivision near Phoenix, Ariz., pursuant to the terms of a written

[26] 17 CFR 200.30–3(a)(12).

temporary trackage rights agreement dated August 6, 2020 (Agreement).[1]

UP states that the sole purpose of the temporary trackage rights is to allow UP to reroute overhead trains due to a bridge outage on UP's Phoenix Subdivision near Tempe, Ariz.[2] UP states that the temporary trackage rights will expire on September 18, 2020.

UP concurrently filed a petition for waiver of the 30-day period under 49 CFR 1180.4(g)(1) in this docket and in Docket No. FD 36425, to allow the proposed temporary trackage rights in both dockets to become effective immediately. By decision served August 10, 2020 the Board granted UP's request. As a result, this exemption is now effective.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption.

All pleadings, referring to Docket No. FD 36424, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on UP's representative, Jeremy Berman, 1400 Douglas Street, Union Pacific Railroad Company, STOP 1580, Omaha, NE 68179.

According to UP, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: August 10, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2020–17719 Filed 8–12–20; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted copy of the Agreement is attached to the verified notice. An unredacted copy has been filed under seal along with a motion for protective order pursuant to 49 CFR 1104.14. That motion is addressed in a separate decision.

[2] UP concurrently filed a verified notice of exemption for the acquisition of additional temporary trackage rights to allow UP to reroute trains due to the bridge outage over approximately 674.4 miles of BNSF rail line in *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company,* Docket No. FD 36425.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36425]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

Union Pacific Railroad Company (UP), a Class I railroad, has filed a verified notice of exemption under 49 CFR 1180.2(d)(8) for the acquisition of temporary trackage rights, for overhead operations, over approximately 674.4 miles of rail line owned by BNSF Railway Company (BNSF) between milepost 787.4 on BNSF's Clovis Subdivision near Vaughn, N.M., and milepost 191.6 on BNSF's Phoenix Subdivision near Phoenix, Ariz., pursuant to the terms of a written temporary trackage rights agreement dated August 6, 2020 (Agreement).[1]

UP states that the sole purpose of the temporary trackage rights is to allow UP to reroute overhead trains due to a bridge outage on UP's Phoenix Subdivision near Tempe, Ariz.[2] UP states that the temporary trackage rights will expire on September 18, 2020.

UP concurrently filed a petition for waiver of the 30-day period under 49 CFR 1180.4(g)(1) in this docket and in Docket No. FD 36424, to allow the proposed temporary trackage rights in both dockets to become effective immediately. By decision served August 10, 2020 the Board granted UP's request. As a result, this exemption is now effective.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption.

All pleadings, referring to Docket No. FD 36425, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on UP's representative, Jeremy Berman, 1400 Douglas Street, Union Pacific Railroad Company, STOP 1580, Omaha, NE 68179.

According to UP, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: August 10, 2020.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2020–17720 Filed 8–12–20; 8:45 am]

BILLING CODE 4915–01–P

[1] A redacted copy of the Agreement is attached to the verified notice. An unredacted copy has been filed under seal along with a motion for protective order pursuant to 49 CFR 1104.14. That motion is addressed in a separate decision.

[2] UP concurrently filed a verified notice of exemption for the acquisition of additional temporary trackage rights to allow UP to reroute trains due to the bridge outage over approximately 566.6 miles of BNSF rail line in *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company,* Docket No. FD 36424.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2020–0032]

Request for Comments and Notice of Public Hearing Concerning Russia's Implementation of Its WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will seek public comment to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to Congress on Russia's

implementation of its obligations as a Member of the World Trade Organization (WTO). Due to COVID–19, the TPSC will foster public participation via written submissions rather than an in-person hearing. This notice includes the schedule for submission of comments and responses to questions from the TPSC for the Russia WTO implementation report.

DATES:

September 21, 2020 (Monday) at 11:59 p.m. EDT: Deadline for submission of written comments on 2020 Russia WTO implementation report.

September 30, 2020 (Wednesday) at 11:59 p.m. EDT: Deadline for the TPSC to pose questions on written comments.

October 9, 2020 (Friday) at 11:59 p.m. EDT: Deadline for submission of responses to questions from the TPSC.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov* (*Regulations.gov*). Follow the instructions for submitting comments in section III below. The docket number is USTR–2020–0032. For alternatives to online submissions, please contact Yvonne Jamison at *Yvonne_D_Jamison@ustr.eop.gov* or (202) 395–3475 before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, contact Yvonne Jamison at *Yvonne_D_Jamison@ustr.eop.gov* or (202) 395–3475. Direct all other questions to Betsy Hafner, Deputy Assistant U.S. Trade Representative for Russia and Eurasia at *Elizabeth_Hafner@ustr.eop.gov* or (202) 395–9124.

SUPPLEMENTARY INFORMATION:

I. Background

Russia became a Member of the WTO on August 22, 2012. On December 21, 2012, following the termination of the application of the Jackson-Vanik amendment to Russia and the extension of permanent normal trade relations to the products of Russia, the United States and Russia both filed letters with the WTO withdrawing their notices of non-application and consenting to have the WTO Agreement apply between them. In accordance with section 201(a) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 (Pub. L. 112–208), USTR annually is required to submit a report to Congress on the extent to which Russia is implementing the WTO Agreement, including the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Trade Related Aspects of Intellectual Property Rights. The Russia WTO implementation report also must assess Russia's progress on acceding to and implementing the Information Technology Agreement (ITA) and the Government Procurement Agreement (GPA). In addition, to the extent that USTR finds that Russia is not implementing fully any WTO agreement or is not making adequate progress in acceding to the ITA or the GPA, USTR must describe in the Russia WTO implementation report the actions it plans to take to encourage Russia to improve its implementation and/or increase its accession efforts. In accordance with section 201(a), and to assist it in preparing this year's report, the TPSC is soliciting public comments.

The terms of Russia's accession to the WTO are contained in the Marrakesh Agreement Establishing the World Trade Organization and the Protocol on the Accession of the Russian Federation to the WTO (including its annexes) (Protocol). The Report of the Working Party on the Accession of the Russian Federation (Working Party Report) provides detail and context to the commitments listed in the Protocol. You can find the Protocol and Working Party Report on USTR's website at *https://ustr.gov/node/5887* or on the WTO website at *http://docsonline.wto.org* (document symbols: WT/ACC/RUS/70, WT/MIN(11)/2, WT/MIN(11)/24, WT/L/839, WT/ACC/RUS/70/Add.1, WT/MIN(11)/2/Add.1, WT/ACC/RUS/70/Add.2, and WT/MIN(11)/2/Add.1.)

II. Public Participation

Due to COVID–19, the TPSC will foster public participation via written submissions rather than an in-person hearing on Russia's implementation of its WTO commitments. USTR invites public comments on Russia's implementation according to the schedule set out in the **DATES** section above. Written comments should address Russia's implementation of the commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas:

a. Import regulation (*e.g.,* tariffs, tariff-rate quotas, quotas, import licenses).
b. Export regulation.
c. Subsidies.
d. Standards and technical regulations.
e. Sanitary and phytosanitary measures.
f. Trade-related investment measures (including local content requirements).
g. Taxes and charges levied on imports and exports.
h. Other internal policies affecting trade.
i. Intellectual property rights (including intellectual property rights enforcement).
j. Services.
k. Government procurement.
l. Rule of law issues (*e.g.,* transparency, judicial review, uniform administration of laws and regulations).
m. Other WTO commitments.

The TPSC will review comments and may ask clarifying questions to commenters. The TPSC will post the questions on the public docket, other than questions that include properly designated business confidential information (BCI). USTR will send questions that include properly designated BCI to the relevant commenters by email, and will not post these questions on the public docket. Replies to questions that contain BCI must follow the procedures in section IV below.

III. Requirements for Submissions

To ensure consideration, interested parties must submit comments and responses to TPSC questions electronically via *Regulations.gov* by the applicable deadlines in the Dates section above. The docket number is USTR–2020–0032. All submissions must be in English. USTR will not accept hand-delivered submissions.

To submit comments using *Regulations.gov*, enter docket number USTR–2020–0032 in the 'search for field on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'filter results by' section on the left side of the screen and click on the link entitled 'comment now.' *Regulations.gov* offers the option of providing comments by filling in a 'type comment' field or by attaching a document using the 'upload file(s)' field. USTR prefers that you provide submissions in an attached document and, in such cases, that you write 'see attached in the 'type' comment field, on the online submission form. In addition, USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the 'type comment' field. At the beginning of the submission, include the following text: (1) 2020 Russia WTO Implementation Report, (2) your organization's name, and (3) whether the document is a comment or an answer to a TPSC question. Written comments should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Include any data

attachments to the submission in the same file as the submission itself, and not as separate files.

When you complete the submission procedure at *Regulations.gov*, you will receive a tracking number confirming successful transmission into *Regulations.gov*. For further information on using the *www.regulations.gov* website, please consult the resources provided on the website by clicking on 'How to Use *Regulations.gov*' on the bottom of the home page. USTR is not able to provide technical assistance for *Regulations.gov*.

IV. Business Confidential (BCI) Submissions

A commenter requesting that USTR treat information contained in a submission as BCI must certify that the information is business confidential and they would not customarily release it to the public. You must clearly designate BCI by marking the submission ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and on each succeeding page, and indicating, via brackets, the specific information that is BCI. Additionally, you must include 'business confidential' in the 'type comment' field and add the designation BCI to the end of the file name for any attachments. For any submission containing BCI, you must separately submit a non-confidential version, *i.e.,* not as part of the same submission with the BCI version, indicating where confidential information has been redacted. USTR will post the non-confidential version in the docket for public inspection.

V. Public Viewing of Review Submissions

USTR will post comments in the docket for public inspection, except business confidential information. You can view comments at *Regulations.gov* by entering docket number USTR–2020–0032 in the search field on the home page. General information concerning USTR is available at *www.ustr.gov.*

Edward Gresser,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2020–17662 Filed 8–12–20; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion Amendment: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Effective August 23, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $16 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative's determination included a decision to establish a product exclusion process. The U.S. Trade Representative initiated the exclusion process in September 2018, and stakeholders have submitted requests for the exclusion of specific products. In July, September, and October 2019, and February and July 2020, the U.S. Trade Representative granted exclusion requests. This notice announces the U.S. Trade Representative's determination to make an amendment to a previously granted exclusion.

DATES: The amendment is retroactive to the date the original exclusion was published and does not extend the period for the original exclusion. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47236 (September 18, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FR 37381 (July 31, 2019), 84 FR 49600 (September 20, 2019), 84 FR 52553 (October 2, 2019), 84 FR 69011 (December 17, 2019), 85 FR 10808 (February 25, 2020), 85 FR 28691 (May 13, 2020), and 85 FR 43291 (July 16, 2020).

Effective August 23, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 279 eight-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $16 billion. *See* 83 FR 40823. The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-digit HTSUS subheading covered by the $16 billion action from the additional duties. The U.S. Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *See* 83 FR 47236 (September 18 notice).

Under the September 18 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant eight-digit subheading covered by the $16 billion action. Requestors also had to provide the ten-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The September 18 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The September 18 notice required submission of requests for exclusion from the $16 billion action no later than December 18, 2018, and noted that the U.S. Trade Representative periodically would announce decisions. In July 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 37381. The U.S. Trade Representative granted additional exclusions in September and October 2019, and February and July 2020. *See* 84 FR 49600; 84 FR 52553; 85 FR 10808; 85 FR 43291.

B. Technical Amendment to Exclusion

Subparagraph A of the Annex makes one technical amendment to U.S. note 20(o)(63) to subchapter III of chapter 99 of the HTSUS, as set out in the Annexes of the notices published at 84 FR 37381 (July 31, 2019).

The U.S. Trade Representative will continue to issue determinations on a periodic basis as needed.

Annex

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on August 23, 2018:

1. U.S. note 20(o)(63) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States, as modified by 85 FR 43291 (July 16, 2020), Annex B(1), is further modified by deleting ''Digital clinical thermometers, valued not over $11 each'' and inserting ''Digital clinical thermometers'' in lieu thereof.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–17654 Filed 8–12–20; 8:45 am]

BILLING CODE 3290–F0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion Amendment: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Effective July 6, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $34 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative's determination included a decision to establish a product exclusion process, which was initiated in July 2018. Stakeholders submitted requests for the exclusion of specific products and in December 2018, March, April, May, June, July, September, October, and December 2019, and February, May, June, and July 2020, the U.S. Trade Representative granted exclusion requests. This notice announces the U.S. Trade Representative's determination to make a technical amendment to one previously granted exclusion.

DATES: The technical amendment announced in this notice is retroactive to the date the original exclusion was published and does not extend the period for the original exclusion. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 83 FR 67463 (December 28, 2018), 84 FR 7966 (March 5, 2019), 84 FR 11152 (March 25, 2019), 84 FR 16310 (April 18, 2019), 84 FR 21389 (May 14, 2019), 84 FR 25895 (June 4, 2019), 84 FR 32821 (July 9, 2019), 84 FR 49564 (September 20, 2019), 84 FR 52567 (October 2, 2019), 84 FR 69016 (December 17, 2019), 85 FR 7816 (February 11, 2020), 85 FR 28692 (May 13, 2020), 85 FR 35158 (June 8, 2020), and 85 FR 42970 (July 15, 2020).

Effective July 6, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 818 eight-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $34 billion. *See* 83 FR 28710. The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders could request exclusion of particular products classified within an eight-digit HTSUS subheading covered by the $34 billion action from the additional duties. The U.S. Trade Representative issued a notice setting out the process for the product exclusions and opened a public docket. *See* 83 FR 32181 (July 11 notice).

Under the July 11 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant eight-digit subheading covered by the $34 billion action. Requestors also had to provide the ten-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and, specifically, whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The July 11 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The July 11 notice required submission of requests for exclusion from the $34 billion action no later than October 9, 2018, and noted that the U.S. Trade Representative periodically would announce decisions. In December 2018, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 83 FR 67463. The U.S. Trade Representative announced additional exclusion determinations in March, April, May, June, July, September, October, and December 2019, and February, May, June, and July 2020. *See* 84 FR 11152; 84 FR 16310; 84 FR 21389; 84 FR 25895; 84 FR 32821; 84 FR 49564; 84 FR 52567; 84 FR 69016;

85 FR 7816; 85 FR 28692; 85 FR 35158; and 85 FR 42970.

B. Technical Amendment to Exclusion

Paragraph A of the Annex makes one technical amendment to U.S. note 20(x)(21) to subchapter III of chapter 99 of the HTSUS, as set out in the Annex of the notice published at 85 FR 7816 (February 11, 2020).

The U.S. Trade Representative will continue to issue determinations on a periodic basis as needed.

Annex

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018:

1. U.S. note 20(x)(21) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States, is modified by deleting ''operating weight of 19.1 t (42,000 lbs.)'' and inserting ''operating weight of at least 19 t but no more than—19.2 t (at least 41,887 lbs.—but not more than 42,329 lbs.)'' in lieu thereof.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–17657 Filed 8–12–20; 8:45 am]

BILLING CODE 3290–F9–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0169]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From J. J. Keller & Associates, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption from J. J. Keller & Associates, Inc. (J. J. Keller) to allow its Advanced Driver Assistance System (ADAS) cameras to be mounted lower in the windshield on commercial motor vehicles than is currently permitted.

DATES: Comments must be received on or before September 14, 2020.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2020–0112 using any of the following methods:

- *Website: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery of Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday–Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. 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'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Docket Operations in Room W12–140, U.S. Department of Transportation, West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

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.*

Public participation: The *http://www.regulations.gov* website is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* website as well as the DOT's *http://docketsinfo.dot.gov* website. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2020–0169), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2020–0169'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31315(b) to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal**

Register (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request. The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

III. J. J. Keller's Application for Exemption

The Federal Motor Carrier Safety Regulations require devices meeting the definition of ''vehicle safety technology,'' including J. J. Keller's ADAS cameras, to be mounted (1) not more than 4 inches below the upper edge of the area swept by the windshield wipers, or (2) not more than 7 inches above the lower edge of the area swept by the windshield wipers, and outside the driver's sight lines to the road and highway signs and signals. J. J. Keller has applied for an exemption from 49 CFR 393.60(e)(1) to allow its ADAS cameras to be mounted lower in the windshield than is currently permitted. A copy of the application is included in the docket referenced at the beginning of this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b)(6), FMCSA requests public comment from all interested persons on J. J. Keller's application for an exemption from 49 CFR 393.60(e)(1). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–17708 Filed 8–12–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Licensing Manual

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled ''Licensing Manual.''

DATES: Comments must be received on or before October 13, 2020.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0014, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0014'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection [1] by any of the following methods:

- Viewing Comments Electronically: Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit''. This information collection can be located by searching by OMB control number ''1557–0014'' or ''Licensing Manual.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or revision of an existing collection of information, before submitting the collection to OMB for approval. To

[1] Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

comply with this requirement, the OCC is publishing notice of the renewal of the collection of information set forth in this document.

Title: Licensing Manual.

OMB Control No.: 1557–0014.

Description: The Licensing Manual sets forth the OCC's policies and procedures for the formation of a national bank or Federal branch or agency, entry into the Federal banking system by other institutions, and corporate expansion and structural changes by existing banks. The Manual includes sample documents to assist the applicant in understanding the types of information the OCC needs in order to process a filing. An applicant may use the format of the sample documents or any other format that provides sufficient information for the OCC to act on a particular filing, including the OCC's electronic filing system, the Central Application Tracking System (CATS).

On May 28, 2020,[2] the OCC issued an interim final rule titled ''Director, Shareholder, and Member Meetings'' providing that:

- FSAs will need to amend their bylaws and file their amendments with the OCC if they wish to utilize remote means of participation for member or shareholder meetings.
- National banks and FSAs must elect procedures for remote participation at member or shareholder meetings.
- Depending on which State or law the FSA elects to follow for procedures for remote means of communication, the FSA may have to amend its bylaws and file the amendment with the OCC.
- National banks must indicate the procedures it will use for telephonic or electronic participation at shareholder meetings in their bylaws.
- The OCC is considering allowing alternative/electronic means of notifying members/shareholders of meetings.

OMB granted emergency clearance to the OCC for these changes. The OCC is now in the process of renewing the emergency clearance.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,715.

Estimated Total Annual Burden: 12,534 hours.

Comments submitted in response to this notice will be summarized and included in the submission to OMB. Comments are requested on:

(a) Whether the information collections are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2020–17704 Filed 8–12–20; 8:45 am]

BILLING CODE 4810–33–P

[2] 85 FR 31943.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2020–0032]

Minority Depository Institutions Advisory Committee

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) announces a meeting of the Minority Depository Institutions Advisory Committee (MDIAC).

DATES: The OCC MDIAC will hold a public meeting on Tuesday, September 1, 2020, via remote means, beginning at 1:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The OCC will hold the September 1, 2020 meeting of the MDIAC via remote means.

FOR FURTHER INFORMATION CONTACT: Beverly Cole, Designated Federal Officer and Deputy Comptroller for the Northeastern District, (212) 790–4001, Office of the Comptroller of the Currency, 340 Madison Ave., Fifth Floor, New York, New York 10173.

SUPPLEMENTARY INFORMATION: By this notice, under the authority of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the regulations implementing the Act at 41 CFR part 102–3, the OCC is announcing that the MDIAC will convene a meeting at 1:00 p.m. EDT on Tuesday, September 1, 2020, via remote means. Agenda items will include current topics of interest to the industry. The purpose of the meeting is for the MDIAC to advise the OCC on steps the agency may be able to take to ensure the continued health and viability of minority depository institutions and other issues of concern to minority depository institutions. Members of the public may submit written statements to the MDIAC by email to: *MDIAC@OCC.treas.gov.*

The OCC must receive written statements no later than 5:00 p.m. EDT on Tuesday, August 25, 2020. Members of the public who plan to attend the meeting via remote means should contact the OCC by 5:00 p.m. EDT on Tuesday, August 25, 2020, to inform the OCC of their desire to attend the meeting and to obtain information about participation via remote means. Members of the public may contact the OCC via email at *MDIAC@OCC.treas.gov* or by telephone at (212) 790–4001. Attendees should provide their full name, email address, and organization, if any. Members of the public who are hearing impaired should call (202) 649–5597 (TTY) no later than 5:00 p.m. EDT on Tuesday, August 25, 2020, to arrange auxiliary aids such as sign language interpretation for this meeting.

Brian P. Brooks,

Acting Comptroller of the Currency.

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of Anti-Money Laundering Programs for Certain Financial Institutions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of currently approved information collections found in existing Bank Secrecy Act regulations requiring money services businesses, mutual funds, insurance companies, dealers in precious metals, precious stones, or jewels, operators of credit card systems, and loan or finance companies to develop and implement written anti-money laundering programs reasonably designed to prevent those financial institutions from being used to facilitate money laundering and the financing of terrorist activities. Although no changes

are proposed to the information collections themselves, this request for comments covers a future expansion of the scope of the annual burden and cost estimates associated with these regulations. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome, and must be received on or before October 13, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2020–0009 and the specific Office of Management and Budget (OMB) control numbers 1506–0020, 1506–0030, and 1506–0035.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2020–0009 and OMB control numbers 1506–0020, 1506–0030, and 1506–0035.

Please submit comments by one method only. Comments will also be incorporated into FinCEN's review of existing regulations, as provided by Treasury's 2011 Plan for Retrospective Analysis of Existing Rules. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. 107–56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures.[1] Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[2]

Section 352 of the USA PATRIOT Act added subsection (h) to 31 U.S.C. 5318 of the BSA. Section 352 mandates that financial institutions establish AML programs in order to guard against money laundering. Such AML programs must include, at a minimum, the following: (a) The development of internal policies, procedures, and controls, (b) the designation of a compliance officer, (c) an ongoing employee training program, and (d) an independent audit function to test programs. Pursuant to section 352, FinCEN issued regulations requiring money services businesses (MSBs) (31 CFR 1022.210), mutual funds (31 CFR 1024.210), insurance companies (31 CFR 1025.210), dealers in precious metals, precious stones, or jewels (31 CFR 1027.210), operators of credit card systems (31 CFR 1028.210), and loan or finance companies (31 CR 1029.210) to develop and implement written AML programs. This notice renews the OMB control numbers associated with these specific AML program regulations. The notice is not renewing the OMB control numbers associated with other types of financial institutions' AML program regulatory requirements at this time for the reasons described below.

On April 29, 2002, FinCEN issued an interim final rule to provide guidance to certain financial institutions concerning section 352 of the USA PATRIOT Act that requires financial institutions to establish AML programs. The interim final rule provided that banks, savings associations, credit unions, brokers or dealers in securities, futures commission merchants, and casinos would be deemed to be in compliance with section 352 if they established and maintained AML programs as required by existing FinCEN regulations, or their respective Federal regulator or self-regulatory organization (SRO).[3]

Prior to FinCEN issuing the interim final rule in 2002, casinos were the only type of financial institution subject to FinCEN AML program regulations.[4] Since 1987, all federally insured depository institutions and credit unions have been required to have AML programs. In addition, in the interim final rule, FinCEN clarified that it was appropriate to implement section 5318(h)(1) of the BSA with respect to brokers or dealers in securities and futures commission merchants through their respective SROs.[5] For that reason, FinCEN does not maintain OMB control numbers for the AML program regulatory requirements of banks, savings associations, credit unions,

[1] Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism.

[2] Treasury Order 180–01 (re-affirmed Jan. 14, 2020).

[3] 67 FR 21110 (April 29, 2002). This document is available at *https://www.fincen.gov/sites/default/files/federal_register_notice/352fininst.pdf.*

[4] *See* 58 FR 13538 (March 12, 1993) (final rule imposing AML program requirements on casinos) and 59 FR 61660 (Dec. 1, 1994) (final rule amending the AML program requirements for casinos to requires the training of casino personnel). These documents are available at *https://www.govinfo.gov/content/pkg/FR-1993-03-12/pdf/FR-1993-03-12.pdf* and *https://www.govinfo.gov/content/pkg/FR-1994-12-01/html/94-29662.htm,* respectively.

[5] The casino AML program regulations are covered under FinCEN OMB control number 1506–0051, which is not set to expire until February 2021. The renewal of that control number, therefore, will be addressed later in 2020 in a separate FinCEN notice. Since 1987, all federally insured depository institutions and credit unions have been required by their Federal regulators to have AML programs. The applicable Federal regulator maintains the OMB control number for the AML program regulatory requirements of depository institutions and credit unions as follows: (a) Office of Comptroller of the Currency (AML program regulations at 12 CFR 21.21—covered by OMB control number 1557–0180); (b) Federal Reserve Board (AML program regulations at 12 CFR 208.63—covered by OMB control number 7100–0310); (c) Federal Deposit Insurance Corporation (AML program regulations at 12 CFR 326.8—covered by OMB control number 3064–0087); and (d) National Credit Union Administration (AML program regulations at 12 CFR 748.2—covered by OMB control number 3133–0108). In the 2002 interim final rule, FinCEN also noted it was appropriate to implement section 5318(h)(1) of the BSA with respect to brokers or dealers in securities and futures commission merchants through their respective SROs, because the Securities and Exchange Commission (SEC) and the Commodity Futures Trade Commission (CFTC) and their SROs significantly accelerated the implementation of AML programs for their regulated financial institutions. Accordingly, 31 CFR 1023.210 and 31 CFR 1026.210 provide that brokers or dealers in securities, and futures commission merchants and introducing brokers in commodities, respectively, will be deemed to be in compliance with the requirements of section 5318(h)(1) of the BSA if they comply with any applicable regulation of their Federal functional regulator governing the establishment and implementation of AML programs. The SEC's SRO is the Financial Industry Regulatory Authority (FINRA). The AML program requirements for brokers or dealers in securities is FINRA Rule 331. The CFTC's SRO is the National Futures Association (NFA). The AML program requirements for futures commission merchant and introducing brokers in commodities is NFA Rule 2–9(c). The SROs are not required to comply with the Paperwork Reduction Act of 1995. Therefore, there are no OMB control numbers for the AML program regulatory requirements of brokers or dealers in securities, futures commission merchants, and introducing brokers in commodities.

brokers or dealers in securities, and futures commission merchants.

II. Paperwork Reduction Act of 1995 (PRA)[6]

Title: AML program requirements for MSBs (31 CFR 1022.210), mutual funds (31 CFR 1024.210), insurance companies (31 CFR 1025.210), dealers in precious metals, precious stones, or jewels (31 CFR 1027.210), operators of credit card systems (31 CFR 1028.210), and loan or finance companies (31 CFR 1029.210).

OMB Control Numbers: 1506–0020, 1506–0030, and 1506–0035.[7]

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control numbers for the AML program regulatory requirements for certain financial institutions.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

Type of Review:

- Renewal without change of currently approved information collections.
- Propose for review and comment a renewal of the portion of the PRA burden that has been subject to notice and comment in the past (the ''traditional annual PRA burden'').
- Propose for review and comment an expansion of the scope of the PRA burden in the future (the ''supplemental annual PRA burden'').

Frequency: As required.

Estimated Number of Respondents: 305,897 financial institutions.[8]

Estimated Recordkeeping Burden: In Part 1 of this notice, FinCEN describes the breakdown of the estimated number of financial institution, by type, and the primary characteristics of their individual AML program requirements. In Part 2, FinCEN proposes for review and comment a renewal of the traditional annual PRA burden, which includes a scope and methodology similar to that used in the past, with a few additional criteria, and the incorporation of cost estimates. In past renewals of the OMB control numbers addressed in this document FinCEN estimated the hourly burden of (a) documenting an AML program for each type of financial institution, and (b) obtaining and verifying the identity of customers at the moment of establishing the initial relationship for providers and sellers of prepaid access only.[9] The additional criteria and the methodology for estimating cost are described in further detail in Part 2. In Part 3, FinCEN proposes for review and comment a method to estimate the burden and cost of a future estimate of a supplemental annual PRA burden. Finally, in Part 4, FinCEN solicits input from the public about (a) the accuracy of the estimate of the traditional annual PRA burden; (b) the method proposed for the calculation of a future supplemental annual PRA burden; (c) the criteria, metrics, and questions FinCEN should take into consideration when researching the information required to determine the future supplemental annual PRA burden estimate; and (d) any other comments about the regulations and the proposed current and future burden and cost estimates of these requirements the public wishes to make.

Part 1. Breakdown of Financial Institutions Covered by This Notice

The breakdown of financial institutions, by type, covered by this notice, is reflected in Table 1 below:

TABLE 1—BREAKDOWN OF FINANCIAL INSTITUTIONS COVERED BY THIS NOTICE, BY TYPE

Type of financial institution		Number of financial institutions
Principal MSBs[10]		[11] 22,939
Providers or sellers of prepaid access	1,632	
Others types of principal MSBs	21,307	
Agent MSBs		[12] 229,161
Mutual funds		[13] 1,591
Insurance companies		[14] 1,200
Dealers in precious metals, stones, and jewels		[15] 20,000
Operators of credit card systems		[16] 6
Loans or finance companies		[17] 31,000
Total		305,897

[6] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

[7] The AML program regulatory requirements are currently covered under the following OMB control numbers: 1506–0020 (31 CFR 1022.210—AML programs for MSBs, 31 CFR 1024.210—AML programs for mutual funds, and 31 CFR 1028.210—AML programs for operators of credit card systems); 1506–0030 (31 CFR 1027.210—AML programs for dealers in precious metals, precious stones, or jewels); and 1506–0035 (31 CFR 1025.210—AML programs for insurance companies, and 31 CFR 1029.210—AML programs for loan and finance companies). There is no OMB control number associated with 31 CFR 1030.210—AML programs for housing government sponsored enterprises, because the purpose of the PRA is not to minimize burden on Federal agencies. (44 U.S.C. 3505(1)).

[8] Table 1 below breaks down the types of financial institutions covered by this notice.

[9] The MSB AML program regulations have a unique requirement. Specifically, 31 CFR 1022.210(d)(1)(iv) provides that a MSB that is a provider or seller of prepaid access must establish procedures to verify the identity of a person who obtains prepaid access under a prepaid program and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Sellers of prepaid access must also establish procedures to verify the identity of a person who obtains prepaid access to funds that exceed $10,000 during any one day and obtain identifying information concerning such a person, including name, date of birth, address, and identification number.

[10] The definition of MSB covers both principal MSBs and agents. Under 31 CFR 1022.210(d)(1)(iii), a person that is a MSB solely because it is an agent for another MSB and the MSB for which it serves as an agent (the principal MSB), may by agreement allocate between them responsibility for developing the policies, procedures, and internal controls of the AML program. However, each MSB remains solely responsible for the actual implementation of an effective AML program.

[11] FinCEN's MSB registration database.

[12] *Id.*

[13] Based on estimates provided for the 2018 notice to renew OMB control number 1506–0033, 83 FR 46011 (Sept. 11, 2018).

[14] Based on estimates provided for the 2018 notice to renew OMB control number 1506–0035 (83 FR 34298 (July 19, 2018)).

[15] Based on estimates provided for the 2018 notice to renew OMB control number 1506–0030 (83 FR 46014 (Sept. 11, 2018)).

[16] Based on estimates provided for the 2018 notice to renew OMB control number 1506–0020 (83 FR 42558 (Aug. 22, 2018)).

[17] *See* supra note 14.

Section 352 requires that an AML program must encompass four key elements: (a) Establishing policies, procedures, and internal controls reasonably designed to assurance compliance with the BSA; (b) designating a person to ensure day to day compliance with the AML program and the BSA; (c) providing education and training to appropriate personnel concerning their responsibilities under the AML program; and (d) implementing an independent review to monitor and maintain an adequate AML program.[18]

The AML program regulations for MSBs, mutual funds, insurance companies, dealers in precious metals, precious stones, or jewels, operators of credit card systems, and loan or finance companies require these financial institutions to implement an AML program that is reasonably designed to prevent the financial institution from being used to facilitate money laundering and terrorist financing. The AML program must be in writing and must be commensurate with the financial institution's risk profile.[19]

The AML program regulations for mutual funds, for which the corresponding OMB control number is being renewed as part of this notice, include customer due diligence (CDD) requirements.[20] FinCEN will consider a mutual fund's CDD requirements as part of the future supplemental annual PRA burden in this notice.

Part 2. Traditional Annual PRA Burden and Cost

The scope of the traditional annual PRA burden and cost estimates of the AML program in this renewal is limited to: Maintaining and updating the written AML program (Action A); storing the written AML program (Action B); producing a copy of the written AML program if requested by regulatory examiners or law enforcement (Action C); for mutual funds, securing approval of the AML program by the board of directors or trustees (Action D);[21] and for providers or sellers of prepaid access, obtaining, verifying, and maintaining cardholder identifying information (Action E).

For purposes of the estimate of the AML program traditional annual PRA burden, FinCEN has made the following assumptions:

(a) In all cases, agent MSBs agree to abide by the policies, procedures, and internal controls established by their principal MSBs.

(b) Principal MSBs establish minimum training and independent review standards for their agents.[22]

(c) The written AML program is stored as an electronic file. The estimated annual burden (5 minutes per financial institution) represents the administrative burden involved in processing the storage of the written program, and not just the time of actual electronic storage, which would be nearly instantaneous.

(d) Producing the written AML program electronically to regulatory or law enforcement agencies, upon their request. FinCEN estimates the annual burden of producing the written program at 5 minutes per financial institution. The estimated annual burden represents the administrative burden involved in producing the program upon request, and not just the time required to make the program available to the requestor for inspection (for example, the actual electronic transmission), which would be nearly instantaneous.

(e) The estimated number of prepaid access arrangements established annually remains at approximately 2.6 million. The collection and storage of cardholder identification information is automated.[23]

The estimated burden associated with each portion of the traditional annual PRA estimate is as follows:

TABLE 2—BURDEN ASSOCIATED WITH EACH PORTION OF THE TRADITIONAL ANNUAL PRA ESTIMATE

Action	Instances per year	Time per instance	Type of financial institution	Number of financial institutions[24]	Total hourly burden
A. Maintaining and updating the written AML program.	1 per financial institution	1 hour	All except agent MSBs	76,736	76,736
B. Storing the written AML program.	1 per financial institution	5 minutes	All	305,897	25,491
C. Producing the AML program upon request.	1 per financial institution	5 minutes	All	305,897	25,491
D. Board of directors/trustees approval of the AML program.	1 per financial institution	1 hour	Mutual funds	1,591	1,591
E. Obtaining, verifying, and storing cardholder identifying information.	2.6 million (once per card)	2 minutes	Providers or sellers of prepaid access.	1,632	86,667
Total Hourly Burden					215,976

[18] Although FinCEN is providing information about burden and cost with respect to the four key elements of an AML program, FinCEN wants to emphasize that the four key elements of an AML program are statutory requirements.

[19] The AML program regulations for mutual funds, specifically, also require the program to be approved in writing by their board of directors or trustees. 31 CFR 1024.210(a).

[20] 31 CFR 1024.220.

[21] The mutual fund AML program regulations are the only AML program regulations being renewed in this notice with a regulatory requirement to secure board of directors' or trustees' approval of the AML program. For that reason, FinCEN is only including the burden and cost of the board of directors' or trustees' approval for mutual funds in the traditional annual PRA burden and cost estimate. FinCEN recognizes, however, that the other financial institutions covered by this notice may also get their board or directors or trustees to approve their AML programs as a best practice.

[22] According to FIN–2016–G001, ''Guidance on Existing AML Program Rule Compliance Obligations for MSB Principals with Respect to Agent Monitoring,'' (March 11, 2016), MSB principals are required to develop and implement risk-based policies, procedures, and internal controls that ensure adequate ongoing monitoring of agent activity, as part of the principal's implementation of its AML program. Imposing a minimum level of general training and a minimum frequency of independent review allows principal MSBs to standardize in part these agent monitoring responsibilities. This document is available at *https://www.fincen.gov/resources/statutes-regulations/guidance/guidance-existing-aml-program-rule-compliance-obligations.*

[23] 83 FR 42558 (Aug. 22, 2018).

[24] As set out in Table 1 above.

FinCEN's estimate for the total traditional hourly annual PRA burden is 215,976 hours.

FinCEN identified four roles and corresponding staff positions involved in maintaining an AML program in order to estimate the hourly costs associated with the burden hour estimates calculated in this part. Those are: (i) General oversight (board of directors/trustees approval of the AML program); (ii) general supervision (providing process oversight); (iii) direct supervision (reviewing operational-level work and cross-checking all or a sample of the work product against their supporting documentation); and (iv) clerical work (engaging in research and administrative review and filing and producing the AML program on request).

FinCEN calculated the fully-loaded hourly wage for each of these four roles by taking the median wage as estimated by the U.S. Bureau of Labor Statistics (BLS), and computing an additional benefits cost as follows: [25]

TABLE 3—TOTAL HOURLY REMUNERATION (FULLY-LOADED HOURLY WAGE) PER ROLE AND BLS JOB POSITION

Role	BLS-code	BLS-name	Median hourly wage	Benefit factor	Fully-loaded hourly wage
Board of directors/trustees	11–1010	Chief Executive [26]	$88.68	1.50	* $133.00
General supervision	11–3031	Financial Manager	62.45	1.50	93.68
Direct supervision	13–1041	Compliance Officer	33.20	1.50	49.80
Clerical work (research, review, and filing and producing the program upon request).	43–3099	Financial Clerk	20.40	1.50	30.60

* $133.02 rounded to $133.00.

FinCEN estimates that, *in general and on average,*[27] each role would spend different amounts of time on each portion of the traditional annual PRA burden, as follows:

For *Action A* set out in Table 2 above, annually maintaining and updating the AML program documentation, the cost of each hour of burden is estimated to be $48.00, as shown in Table 4 below.

Action A applies to all financial institutions covered by this notice, except agent MSBs.

TABLE 4—WEIGHTED AVERAGE HOURLY COST OF MAINTAINING AND UPDATING AML PROGRAM DOCUMENTATION

General supervision		Direct supervision		Clerical work (case review)		Weighted average hourly cost
% time	Hourly cost	% time	Hourly cost	% time	Hourly cost	
10%	$9.37	60%	$29.88	30%	$9.18	$48.00 *

*$48.43 rounded to $48.00.

For *Actions B, C,* and *E* set out in Table 2 above, the cost of each hour of burden is estimated to be $33.00, as shown in Table 5 below:

- *Action B*—storing the AML program. (Applies to all financial institutions covered by this notice).
- *Action C*—producing of the AML program upon request. (Applies to all financial institutions covered by this notice).
- *Action E*—obtaining, verifying, and storing prepaid access customer identifying information. (Only applies to providers and sellers of prepaid access).

TABLE 5—WEIGHTED AVERAGE HOURLY COST OF STORING AND PRODUCING AML PROGRAM DOCUMENTATION UPON REQUEST, AND OBTAINING, VERIFYING, AND STORING PREPAID ACCESS CUSTOMER IDENTIFYING INFORMATION

General supervision		Direct supervision		Clerical work (recordkeeping)		Weighted average hourly cost
% time	Hourly cost	% time	Hourly cost	% time	Hourly cost	
1%	$0.94	9%	$4.48	90%	$27.54	$33.00 *

*$32.96 rounded to $33.00.

For *Action D* set out in Table 2 above, approval of a mutual fund's AML program by the board of directors or trustees, the cost of each hour of burden would be $133.00, as shown in Table 3

[25] U.S. Bureau of Labor Statistics, Occupational Employment Statistics-National, May 2019, available at *https://www.bls.gov/oes/tables.htm.* The most recent data from the BLS corresponds to May 2019. For the benefits component of total compensation, see U.S. Bureau of Labor Statistics, Employer's Cost per Employee Compensation as of December 2019, available at *https://www.bls.gov/news.release/ecec.nr0.htm.* The ratio between benefits and wages for financial activities, credit intermediation and related activities is $15.95 (hourly benefits)/$32.05 (hourly wages) = 0.50. The benefit factor is 1 plus the benefit/wages ratio, or 1.50. Multiplying each hourly wage by the benefit factor produces the fully-loaded hourly wage per position.

[26] FinCEN recognizes that a board of directors/trustees would be on a different pay scale than a chief executive officer, however, chief executive officer is the highest paid category in the BLS Occupational Employment Statistics. For that reason, FinCEN is conservatively estimating the highest wage rate available for its cost analysis.

[27] By ''in general,'' FinCEN is speaking without regard to outliers (*e.g.,* financial institutions with AML programs with complexities that are uncommonly higher or lower than those of the population at large). By ''on average,'' FinCEN means the mean of the distribution of each subset of the population.

above. *Action D* only applies to mutual funds.[28]

The total cost of the traditional annual PRA burden would be $8,437,348, as reflected in Table 6 below:

TABLE 6—TOTAL COST OF TRADITIONAL ANNUAL PRA BURDEN

Action	Total burden in hours (Table 2)	Hourly cost $	Hourly cost Source	Total cost
A. Maintaining and updating the written AML program	76,736	$48.00	Table 4	$3,683,328
B. Storing the written AML program	25,491	33.00	Table 5	841,203
C. Producing the written AML program upon request	25,491	33.00	Table 5	841,203
D. Board of directors/trustees approval of the AML program	1,591	133.00	Table 3	211,603
E. Obtaining, verifying, and storing prepaid access customer identifying information.	86,667	33.00	Table 5	2,860,011
Total Cost				8,437,348

Part 3. Supplemental Annual PRA Burden

In the future, FinCEN intends to add a supplemental annual PRA burden calculation for the AML program regulations covered by this notice, reflecting the annual PRA burden and cost involved in implementing certain actions that are part of the four key elements of an AML program. As noted above, for all of the financial institutions covered by this notice, an AML program must encompass four key elements: (a) Establishing policies, procedures, and internal controls reasonably designed to ensure compliance with the BSA; (b) designating a person to ensure day to day compliance with the AML program and the BSA; (c) providing education and training to appropriate personnel concerning their responsibilities under the AML program; and (d) implementing an independent review to monitor and maintain an adequate AML program.[29]

The burden hours and cost of two of the key elements of an AML program (internal controls, and designation of a BSA compliance officer) are accounted for individually across all of the 42 OMB control numbers FinCEN maintains for the various BSA regulatory requirements because those requirements necessitate that internal controls be put in place and that a BSA compliance officer be designated. For that reason, for the OMB control numbers and related regulations renewed in this notice, FinCEN generally does not intend to estimate burden hours and cost applicable to these two key elements in the future supplemental annual PRA burden.

The future supplemental annual PRA burden calculation will include the estimated burden and cost to implement the other two key elements of an AML program ((c) BSA training, and (d) independent audit) relating to the regulations and corresponding OMB control numbers being renewed in this notice. The future supplemental annual PRA burden calculation also will include the estimated burden and cost for a mutual fund to implement CDD, because CDD is a requirement in the mutual fund AML program regulations, which are being renewed in this notice.

To further clarify, below are (1) a list of actions FinCEN intends to include in a future supplemental annual PRA burden estimate relating to the regulations and OMB control numbers renewed in this notice, and (2) a list of actions FinCEN intends to cover in OMB control number renewals associated with other BSA regulatory requirements.

(a) FinCEN *intends to include* the following within a future supplemental annual PRA burden estimate:

i. Any generic BSA-related education and training provided to all levels of the organization, and any training provided to appropriate personnel on BSA issues in excess of that required by their job-specific responsibilities under their financial institution's the AML program.

ii. The burden and cost of any internal or external independent review of compliance with BSA-specific obligations.

iii. The annual burden and cost of the implementation of CDD requirements for mutual funds, only. The CDD requirements include the implementation of risk-based procedures for conducting ongoing customer due diligence, including (a) understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile, and (b) conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information, such as information about the beneficial ownership of legal entity customers.

(b) FinCEN *does not intend to include* the following as part of a future supplemental annual PRA burden estimate:

i. The annual PRA burden and cost of the policies, procedures, and internal controls established in the AML program to ensure compliance with the BSA;[30]

ii. the designation of a person to ensure day to day compliance with the financial institution's AML program and the BSA;[31] and

iii. AML education and training provided to personnel relating to their job specific responsibilities.[32]

FinCEN does not have the necessary information to provide a tentative estimate of these supplemental annual

[28] *See* supra note 21.

[29] Although FinCEN is providing information about burden and cost with respect to the four key elements of an AML program, FinCEN wants to emphasize that the four key elements of an AML program are statutory requirements.

[30] As noted above, the burden hours and cost of internal controls will be accounted for individually across all of the 42 OMB control numbers FinCEN maintains for the various BSA regulatory requirements because those requirements necessitate that internal controls be put in place.

[31] As noted above, the burden hours and cost of a BSA compliance officer will be accounted for individually across all of the 42 OMB control numbers FinCEN maintains for the various BSA regulatory requirements because those requirements necessitate that a BSA compliance officer be designated.

[32] As noted above, generic BSA-related training provided to all levels of the organization will be included in future burden and cost estimates corresponding to the OMB control numbers being renewed in this notice. Job-specific training related to specific BSA requirements, will be covered in the OMB control numbers corresponding to those specific BSA requirements.

PRA hourly burdens and costs within the current notice. FinCEN also recognizes that it does not have all the necessary information to precisely estimate the traditional annual PRA burden. For that reason, FinCEN is relying on estimates used in prior renewals of OMB control numbers and applicable regulations. FinCEN further recognizes that after receiving public comments, the burden and cost estimates for the traditional annual PRA burden may vary significantly. FinCEN intends to conduct more granular studies of the actions included in the proposed scope of a supplemental annual PRA burden in the near future, to arrive at accurate estimates of net BSA hourly burden and cost.[33] The data obtained in these studies also may result in a significant variation in the estimated traditional annual PRA hourly burden.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

Estimated Recordkeeping Burden: Due to the different scope and criteria used for the estimate, the average estimated annual traditional PRA burden, measured in hours per respondent, is: (Action A) 1 hour per principal financial institution, for maintaining and updating the AML program; (Action B) 5 minutes per financial institution, for storing the written AML program; (Action C) 5 minutes per financial institution, for producing a copy of the AML program if requested by regulatory examiners or law enforcement; (Action D) 1 hour per mutual fund, for securing approval of the AML program by the board of directors or trustees; and (Action E) 2 minutes per provider or seller of prepaid access, for obtaining, verifying, and maintaining customer identifying information.

Estimated Number of Respondents: 305,897, as described in Table 1.

Estimated Total Annual Responses: Due to unique requirements in the mutual fund and MSB AML program regulations, each of the five actions listed below impact a different estimated number of financial institutions as follows:

(1) 76,736 (all financial institutions except agent MSBs) for the maintaining the written AML Program;

(2) 305,897 (total number of financial institutions) for storing the written AML program;

(3) 305,897 (total number of financial institutions) for producing a copy of the written AML program if requested by regulatory examiners or law enforcement;

(4) 1,591 (number of mutual funds) for securing approval of an AML program by the board of directors or trustees; and

(5) 2,600,000 (number of new prepaid access arrangements added per year) for providers and sellers of prepaid access for obtaining, verifying, and maintaining customer identifying information.

Estimated Total Annual Recordkeeping Burden: The estimated total annual PRA burden is 215,976 hours, as described in Table 2.

Estimated Total Annual Recordkeeping Cost: The cost of the estimated total annual PRA is $8,437,348, as described in Table 6.

Part 4. Request for Comments

(a) Specific request for comments on the revised traditional annual PRA hourly burden and cost estimates.

FinCEN invites comments on any aspect of the revision to the traditional annual PRA burden, as described in Part 2 of this notice. In particular, FinCEN seeks comments on the adequacy of (i) the estimated number of financial institutions, by type, covered by this notice; (ii) the assumptions FinCEN employed to estimate the burden; (iii) the estimated number of burden hours attributed to each action set out in Table 2; (iv) the levels of the organization of the financial institution participating in such action, their estimated hourly remuneration, and the estimated proportion of time each level participated in each portion of the burden; and (v) the estimated number of new prepaid access arrangements established on an annual basis. FinCEN encourages commenters to include any publicly available source for alternative estimates or methodologies.

(b) Specific requests for comments on the proposed criteria for determining the scope of a future traditional and supplemental annual PRA hourly burden and cost estimate.

FinCEN invites comments on any aspect of the criteria for a future estimate of the traditional and supplemental annual PRA hourly burden and cost, as described in Part 3 of this notice. In particular, FinCEN seeks comments on the following:

(i) Is it realistic to estimate that the PRA hourly burden and cost to implement policies, procedures, and internal controls to ensure compliance with BSA regulations and maintain a BSA compliance officer will be adequately reflected by estimating (a) the hourly burden and cost attributed to internal controls, and (b) the BSA compliance officer's time across each of the specific BSA requirements, such as reports of transactions in currency, and reports of suspicious transactions.

(ii) Specific request for comments on the appropriate criteria, methodology, and questionnaire required to obtain information required for a realistic estimate of the future traditional and supplemental annual PRA hourly burden and cost. For example, as it relates to training, independent review, and maintaining and updating the AML program:

Training:

(1) How much time is spent on creating and implementing the AML training plan?

(2) How much time is spent on delivering instructor led training or creating web- based training?

(3) How much time does the financial institution's compliance department spend on creating AML related training content, or is the training function conducted by a team outside of the financial institution's compliance department of the financial institution?

(4) How much time is spent identifying the proper audience for training?

(5) How much time is spent tracking, and reporting on, AML-related training?

Independent Review:

(1) How much of the financial institution compliance department's time is spent on responding to inquiries or correcting deficiencies related to the independent review of the AML program?

(2) If the independent review is conducted by an internal audit department, how much of the internal audit department's time is spent creating and implementing the required testing plan for the independent review?

Updating and Maintaining a Written AML Program: On average, how many times per year does your financial institution update its AML program?

(c) General request for comments.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (i) Whether the collection of information is necessary for the proper

[33] Net hourly burden and cost are the burden and cost a financial institution incurs to comply with requirements that are unique to the BSA, and that do not support any other business purpose or regulatory obligation of the financial institution. Burden for purposes of the PRA does not include the time and financial resources needed to comply with an information collection if the time and resources are for things a business (or other person) does in the ordinary course of its activities if the agency demonstrates that the recordkeeping activities needed to comply are usual and customary. 5 CFR 1320.3(b)(2).

performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 7, 2020.

Michael Mosier,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2020–17696 Filed 8–12–20; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of the Customer Identification Program Regulatory Requirements for Certain Financial Institutions

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, of currently approved information collections found in existing Bank Secrecy Act regulations requiring banks, savings associations, credit unions, certain non-federally regulated banks, brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities, to develop and implement customer identification programs designed to allow the financial institution to form a reasonable belief it knows the true identity of each customer. Although no changes are proposed to the information collections themselves, this request covers a future expansion of the scope of the annual burden and cost estimates associated with these regulations. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome, and must be received on or before October 13, 2020.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2020–0010 and the specific Office of Management and Budget (OMB) control numbers 1506–0022, 1506–0026, 1506–0033, and 1506–0034.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2020–0010 and OMB control numbers 1506–0022, 1506–0026, 1506–0033, and 1506–0034.

Please submit comments by one method only. Comments will also be incorporated into FinCEN's review of existing regulations, as provided by Treasury's 2011 Plan for Retrospective Analysis of Existing Rules. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Pub. L. 107–56) and other legislation. The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5332, and notes thereto, with implementing regulations at 31 CFR Chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement anti-money laundering (AML) programs and compliance procedures.[1] Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[2]

31 U.S.C. 5318(l) requires FinCEN to issue regulations prescribing minimum standards for customer identification programs (CIP) for financial institutions.[3] Regulations implementing section 5318(l) are as follows: (i) Banks, savings associations, credit unions, and certain non-federally regulated banks (31 CFR 1020.220); (ii) brokers or dealers in securities (31 CFR 1023.220); (iii) mutual funds (31 CFR 1024.220); and (iv) futures commission merchants and introducing brokers in commodities (31 CFR 1026.220).

II. Paperwork Reduction Act of 1995 (PRA)[4]

Title: Customer identification programs (CIP) for certain financial institutions (31 CFR 1020.220, 1023.220, 1024.220, and 1026.220).

OMB Control Numbers: 1506–0022, 1506–0026, 1506–0033, and 1506–0034.[5]

Report Number: Not applicable.

Abstract: FinCEN is issuing this notice to renew the OMB control numbers for the CIP regulatory requirements for certain financial institutions.

Affected Public: Businesses or other for-profit institutions, and non-profit institutions.

Type of Review:

- Renewal without change of currently approved information collections.
- Propose for review and comment a renewal of the portion of the PRA

[1] Section 358 of the USA PATRIOT Act added language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism.

[2] Treasury Order 180–01 (re-affirmed Jan. 14, 2020).

[3] Section 5318(l)(2) prescribes that the regulations, at a minimum, require financial institutions to implement reasonable procedures for: (1) Verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. Section 5318(l)(3) further directed that the regulations take into consideration the types of accounts maintained by financial institutions, the methods of opening accounts, and the types of identifying information available.

[4] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

[5] The CIP regulatory requirements are currently covered under the following OMB control numbers: 1506–0022 (31 CFR 1026.220—Customer identification programs for futures commission merchants and introducing brokers); 1506–0026 (31 CFR 1020.220—Customer identification programs for banks, savings associations, credit unions, and certain non-federally regulated banks); 1506–0033 (31 CFR 1024.220—Customer identification programs for mutual funds); and 1506–0034 (31 CFR 1023.220—Customer identification programs for brokers or dealers in securities).

burden that has been subject to notice and comment in the past (the ''traditional annual PRA burden'').

• Propose for review and comment a future expansion of the scope of the PRA burden (the ''supplemental annual PRA burden'').

Frequency: As required.

Estimated Number of Respondents: 16,938 financial institutions.[6]

Estimated Recordkeeping Burden: In Part 1 of this notice, FinCEN describes the breakdown of the estimated number of financial institutions, by type, and for certain financial institutions, the estimated number of new accounts opened per year. In addition, Part 1 describes the primary characteristics of covered financial institutions' CIP requirements.[7] In Part 2, FinCEN proposes for review and comment a renewal of the estimate of the traditional annual PRA hourly burden, which includes a scope and methodology similar to that used in the past, with the incorporation of cost estimates. The scope and methodology used in the past differed according to the type of covered financial institution. In Part 3, FinCEN proposes for review and comment a methodology to estimate the hourly burden and cost of a future estimate of a supplemental annual PRA burden that includes the full scope of CIP requirements for all covered financial institutions. Finally, in Part 4, FinCEN solicits input from the public about: (a) The accuracy of the estimate of the traditional annual PRA burden; (b) the method proposed for the calculation of a future supplemental annual PRA burden; (c) the criteria, metrics, and most appropriate questions FinCEN should consider when researching the information to estimate the future supplemental annual PRA burden, according to the methodology proposed; and (d) any other comments about the regulations and the proposed current and future hourly burden and cost estimates of these requirements.

Part 1. Breakdown of the Financial Institutions and Transactions Covered by This Notice

The breakdown of financial institutions and transactions, by type, covered by this notice is reflected in Table 1 below:

TABLE 1—BREAKDOWN OF FINANCIAL INSTITUTIONS AND TRANSACTIONS COVERED BY THIS NOTICE, BY TYPE OF INSTITUTION

Type of financial institution	Estimated number of annual responses	
	Number of financial institutions	Number of new accounts opened
Banks	[8] 10,542	Information not available.
Brokers or dealers in securities	[9] 3,640	9,000,000.[10]
Futures commission merchants	[11] 61	Information not available.
Introducing brokers in commodities	[12] 1,104	Information not available.
Mutual funds	[13] 1,591	20,000,000.[14]
Totals	16,938	29,000,000.

All covered financial institutions are required to implement CIPs appropriate for their size and type of business. The CIP must include at minimum the following five requirements:

(1) Written CIP (if a financial institution is required to have an AML program,[15] the CIP must be part of the written AML program); [16]

(2) Identity verification procedures (risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable); [17]

(3) Recordkeeping (procedures for making and maintaining a record of all information obtained under the CIP requirements); [18]

(4) Consultation of government lists (procedures to determine whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency, and designated as such by Treasury in consultation with the Federal functional regulators); [19] and

(5) Customer notice (procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities).[20]

The CIP may also include procedures specifying when a financial institution may rely on another financial institution to perform any of the financial

[6] Table 1 below sets forth a breakdown of the types of financial institutions covered by this notice.

[7] The term ''covered financial institution'' applies to all financial institutions with a CIP regulatory requirement namely banks, savings associations, credit unions, certain non-federally regulated banks, brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities.

[8] According to the Federal Deposit Insurance Corporation (FDIC) there were 5,103 FDIC-insured banks as of March 31, 2020. According to the Federal Reserve Board (FRB), there were 203 other entities supervised by the FRB, as of June 16, 2020, that fall within the definition of bank. (20 Edge Act institutions, 15 agreement corporations, and 168 foreign banking organizations). According to the National Credit Union Administration there were 5,236 federally regulated credit unions as of December 31, 2019.

[9] According to the Securities and Exchange Commission (SEC), there were 3,640 brokers or dealers in securities registered with the SEC, as of March 31, 2020.

[10] According to the SEC, there were approximately 9,000,000 new accounts opened by broker or dealers in securities in 2017, based on forms filed with the SEC. The SEC provided this estimate to FinCEN for the last renewal of OMB control number 1506–0034 (83 FR 46012, Sept. 11, 2018). FinCEN was unable to obtain a more recent estimate.

[11] According to the Commodities and Futures Trading Commission (CFTC), there were 61 futures commission merchants registered with the CFTC, as of March 31, 2020.

[12] According to the CFTC, there were 1,104 introducing brokers in commodities registered with the CFTC as of March 31, 2020.

[13] According to the SEC, there were approximately 1,591 mutual funds in 2017, based on forms filed with the SEC. The SEC provided the estimate to FinCEN for the last renewal of OMB control number 1506–0033, 83 FR 46012 (Sept. 11, 2018). FinCEN was unable to obtain a more recent estimate.

[14] According to the SEC, there were approximately 20,000,000 new mutual fund accounts opened in 2017. The SEC provided this estimate to FinCEN for the last renewal of OMB control number 1506–0033, 83 FR 46012 (Sept. 11, 2018). FinCEN was unable to obtain a more recent estimate.

[15] 31 CFR 1020.210; 1023.210; 1024.210; and 1026.210.

[16] 31 CFR 1020.220(a)(1); 1023.220(a)(1); 1024.220(a)(1); and 1026.220(a)(1).

[17] 31 CFR 1020.220(a)(2); 1023.220(a)(2); 1024.220(a)(2); and 1026.220(a)(2).

[18] 31 CFR 1020.220(a)(3); 1023.220(a)(3); 1024.220(a)(3); and 1026.220(a)(3).

[19] 31 CFR 1020.220(a)(4); 1023.220(a)(4); 1024.220(a)(4); and 1026.220(a)(4).

[20] 31 CFR 1020.220(a)(5); 1023.220(a)(5); 1024.220(a)(5); and 1026.220(a)(5).

institution's CIP procedures, provided certain conditions are met.[21]

Part 2. Traditional Annual PRA Burden and Cost

In the past, the scope of the traditional annual PRA burden estimates of the CIP differed according to the type of financial institution involved:

(a) For *banks, futures commission merchants, and introducing brokers in commodities,* due to the practical challenges of obtaining the total number of new accounts opened per year, the estimate was limited to the annual hourly burden of maintaining and updating the written CIP, and providing customers with adequate notice that the financial institution was requesting information to verify their identities. The estimate did not take into account the hourly burden of implementing the other CIP requirements (*i.e.,* verification and recordkeeping requirements, and consulting government lists).

(b) For *brokers or dealers in securities and mutual funds,* where FinCEN obtained the approximate numbers of new accounts opened per year, the estimate took into consideration the annual hourly burden to implement the CIP requirements for all new customers, which included identity verification, recordkeeping, and consulting government lists. The estimate did not take into account the hourly burden of maintaining and updating the written CIP or customer notification of CIP requirements.

For purposes of this renewal and the associated estimate of the traditional annual PRA burden, FinCEN is making the following assumptions:

(a) For *banks, futures commission merchants, and introducing brokers in commodities:*

i. FinCEN continues estimating the annual hourly burden of maintaining and updating the CIP at ten hours per financial institution. This estimate covers: (a) The hourly burden of updating the CIP to take into consideration any regulatory changes and any modifications required as a result of a financial institution making changes to the type of accounts maintained, the methods used to open accounts, and the types of documentary or non-documentary methods for verifying identifying information the financial institution intends to use; and (b) presenting the updated CIP to the appropriate level of management within the financial institution for approval.

ii. FinCEN continues estimating the hourly burden of providing customers with notification of the CIP at one hour annually per financial institution.

(b) For *brokers or dealers in securities and mutual funds:*

i. FinCEN continues estimating the hourly burden of obtaining and verifying a customer's identity (*i.e.,* verification and recordkeeping requirements, and consulting government lists) at two minutes per new account opened.

ii. FinCEN is also incorporating the annual hourly burden of maintaining and updating the CIP at ten hours per financial institution. This estimate covers: (a) The hourly burden of updating the CIP to take into consideration any regulatory changes and any modifications required as a result of a financial institution making changes to the type of accounts maintained, the methods used to open accounts, and the types of documentary or non-documentary methods for verifying identifying information the financial institution intends to use; and (b) presenting the updated CIP to the appropriate level of management within the financial institution for approval.

iii. In addition, FinCEN is incorporating an estimate of the hourly burden of providing customers with notification of the CIP at one hour annually per financial institution.

Under these assumptions, FinCEN's estimate of the traditional annual PRA burden is 1,152,985 hours, as detailed in Tables 2 and 3.[22]

TABLE 2—HOURLY BURDEN ASSOCIATED WITH MAINTAINING AND UPDATING THE CIP AND CUSTOMER NOTIFICATION FOR ALL COVERED FINANCIAL INSTITUTIONS

Type of financial institution	Number of financial institutions[23]	Time per financial institution		Total hourly burden	
		Maintenance (hours)	Notification (hours)	Maintenance	Notification
Banks	10,542	10	1	105,420	10,542
Futures commission merchants	61	10	1	610	61
Introducing brokers in commodities	1,104	10	1	11,040	1,104
Brokers or dealers in securities	3,640	10	1	36,400	3,640
Mutual funds	1,591	10	1	15,910	1,591
Totals	16,938			169,380	16,938

TABLE 3—HOURLY BURDEN ASSOCIATED WITH IMPLEMENTATION OF THE IDENTITY VERIFICATION, RECORDKEEPING, AND CONSULTING GOVERNMENT LISTS REQUIREMENTS FOR BROKERS OR DEALERS IN SECURITIES AND MUTUAL FUNDS

Type of financial institution	Number of financial institutions[24]	New accounts per year	Time per new account (minutes)	Total hourly burden *
Brokers or dealers in securities	3,640	9,000,000	2	300,000
Mutual funds	1,591	20,000,000	2	666,667
Totals	5,231			966,667

* New accounts per year times two minutes, divided by 60 minutes per hour

[21] 31 CFR 1020.220(a)(6); 1023.220(a)(6); 1024.220(a)(6); and 1026.220(a)(6).

[22] The total estimate of the traditional annual PRA burden is the summation of the total hourly burden of CIP maintenance (169,380), notification (16,938) and implementation (966,667) as set out in Table 1 and 2.

[23] As set out in Table 1 above.

[24] As set out in Table 1 above.

To calculate the hourly burden estimates in this notice, FinCEN identified four roles and corresponding staff positions involved in maintaining and implementing the CIP: (i) General oversight (board of directors and/or senior management); (ii) general supervision (providing process oversight); (iii) direct supervision (reviewing operational-level work and cross-checking all or a sample of the work product against supporting documentation); and (iv) clerical work (engaging in research and administrative review, and recordkeeping).

FinCEN calculated the fully-loaded hourly wage for each of these four roles by taking the median wage as estimated by the U.S. Bureau of Labor Statistics (BLS), and computing an additional benefits cost as follows: [25]

TABLE 4—FULLY-LOADED HOURLY WAGE BY ROLE AND BLS JOB POSITION FOR ALL FINANCIAL INSTITUTIONS COVERED BY THIS NOTICE

Role	BLS-code	BLS-name	Median hourly wage	Benefit factor	Fully-loaded hourly wage
Board of directors/senior management	11–1010	Chief Executive	$88.68	1.50	* $133.02
General supervision	11–3031	Financial Manager	62.45	1.50	93.68
Direct supervision	13–1041	Compliance Officer	33.20	1.50	49.80
Clerical work (research, review, and recordkeeping)	43–3099	Financial Clerk	20.40	1.50	30.60

* $133.20 rounded to $133.00.

FinCEN estimates that, *in general and on average,*[26] each role would spend different amounts of time on each portion of the traditional annual PRA burden, as follows:

(a) For annually maintaining and updating the CIP, estimated at ten hours per *covered financial institution,* the cost of each hour of burden would be broken down as follows: (i) One burden hour at $133.00, representing the cost of board of directors or senior management review and approval, and (ii) nine hours of work by other staff, averaging $48.00, as set out in Table 5 below:

TABLE 5—WEIGHTED AVERAGE HOURLY COST OF MAINTAINING AND UPDATING THE CIP AND OBTAINING BOARD APPROVAL FOR ALL COVERED FINANCIAL INSTITUTIONS

General supervision		Direct supervision		Clerical work (case review)		Weighted average hourly cost
%time	Hourly cost	%time	Hourly cost	%time	Hourly cost	
10%	$9.37	60%	$29.88	30%	$9.18	* $48.00

* $48.43 rounded to $48.00.

(b) For providing customers notification of the CIP, estimated at one hour per *covered financial institution,* the cost of each hour of burden would be $32.00, as set out in Table 6 below:

TABLE 6—WEIGHTED AVERAGE HOURLY COST OF PROVIDING CUSTOMER NOTIFICATION OF CIP FOR ALL COVERED FINANCIAL INSTITUTIONS

General supervision		Direct supervision		Clerical work (case review)		Weighted average hourly cost
%time	Hourly cost	%time	Hourly cost	%time	Hourly cost	
0%	$0.00	5%	$2.49	95%	$29.07	* $32.00

* $31.56 rounded to $32.00.

(c) For obtaining and verifying customers' identification information for purposes of implementing CIP, estimated at two minutes per account, per *broker or dealer in securities or mutual fund,* the cost of each hour of burden would be $33.00, as reflected in Table 7 below:

[25] The U.S. Bureau of Labor Statistics, Occupational Employment Statistics-National, May 2019, available at *https://www.bls.gov/oes/tables.htm.* The most recent data from the BLS corresponds to May 2019. For the benefits component of total compensation, see U.S. Bureau of Labor Statistics, Employer's Cost per Employee Compensation as of December 2019, available at *https://www.bls.gov/news.release/ecec.nr0.htm.* The ratio between benefits and wages for financial activities, credit intermediation and related activities is $15.95 (hourly benefits)/$32.05 (hourly wages) = 0.50. The benefit factor is 1 plus the benefit/wages ratio, or 1.50. Multiplying each hourly wage by the benefit factor produces the fully-loaded hourly wage per position.

[26] By ''in general,'' FinCEN means without regard to outliers (*e.g.,* financial institutions with CIPs with complexities that are uncommonly higher or lower than those of the population at large). By ''on average,'' FinCEN means the mean of the distribution of each subset of the population.

TABLE 7—WEIGHTED AVERAGE HOURLY COST OF OBTAINING AND VERIFYING CUSTOMERS' IDENTIFYING INFORMATION FOR BROKERS OR DEALERS IN SECURITIES AND MUTUAL FUNDS

General supervision		Direct supervision		Clerical work (case review)		Weighted average hourly cost
%time	Hourly cost	%time	Hourly cost	%time	Hourly cost	
1%	$0.94	9%	$4.48	90%	$27.54	*$33.00

*$32.96 rounded to $33.00.

The total estimated cost of the traditional annual PRA burden is $42,011,997, as reflected in Table 8 below:

TABLE 8—TOTAL COST OF TRADITIONAL ANNUAL PRA BURDEN

Task	Total burden		Hourly cost		Total cost
	Hours	Source	$	Source	
Board of directors/senior management approval of CIP	*16,938	Table 2	$133.00	Table 4	$2,252,754
Maintaining and updating the CIP	*152,442	Table 2	48.00	Table 5	7,317,216
Customer notification of CIP	16,938	Table 2	32.00	Table 6	542,016
Implementing the CIP (identifying and verifying customer information, maintain records, and consulting government lists).	966,667	Table 3	33.00	Table 7	31,900,011
Totals	1,152,985				42,011,997

*As explained in item (a) above, the ten hours required for maintaining and updating a written CIP is broken down as follows: One hour per covered financial institution for senior management approval of the written CIP (16,938 covered financial institutions multiplied by one hour equals 16,938 hours in total) at $133.00 an hour; and nine hours per covered financial institution for maintaining and updating the written CIP (16,938 multiplied by nine hours equals 152,442 hours in total) at $48.00 an hour.

Part 3. Supplemental Annual PRA Burden

In the future, FinCEN intends to add a supplemental annual PRA burden calculation for the CIP and apply the same scope and criteria for estimating annual PRA burden and cost to all covered financial institutions. For *banks, futures commission merchants, and introducing brokers in commodities,* the calculation of the future supplemental annual PRA burden will include adding an annual hourly burden and cost estimate reflecting the work involved in: Verifying the identity of each customer; making and maintaining a record of all information obtained under the CIP; and determining whether a new customer appears on any list of known or suspected terrorist organizations issued by any Federal government agency.

FinCEN does not have the necessary information to provide a tentative estimate of these supplemental annual PRA hourly burdens and costs within the current notice. FinCEN also recognizes that it does not have all the necessary information to precisely estimate the traditional annual PRA burden. For that reason, FinCEN is relying on estimates used in prior renewals of OMB control numbers and applicable regulations. FinCEN further recognizes that after receiving public comments, the hourly burden and cost estimates for the traditional annual PRA burden may vary significantly. FinCEN intends to conduct more granular studies of the actions included in the proposed scope of a supplemental annual PRA burden in the near future, to arrive at more precise estimates of net BSA hourly burden and cost.[27] The data obtained in these studies also may result in a significant variation of the estimated traditional annual PRA hourly burden.

Estimated Recordkeeping Burden: Due to differences in the availability of information, resulting in differences in scope and criteria used to calculate the burden estimates, the average estimated annual PRA burden, measured in hours per respondent, is (a) 11 hours for *all covered financial institutions* to comply with the CIP maintenance and notice requirements (*i.e.,* ten hours for maintenance, and one hour for notice per financial institution, as set out in Table 2), and (b) 185 hours for *brokers and dealers in securities and mutual funds* to comply with the CIP verification, recordkeeping, and consulting government lists requirements (*i.e.,* the result of dividing the total number of burden hours (966,667) by the total number of financial institutions (5,231), as set out in Table 3).

Estimated Number of Respondents: 16,938, as set out in Table 1.

Estimated Total Annual Responses: Due to the *different* scope and criteria used for the estimates, the estimates are (a) 16,938 for *all covered financial institutions;* and (b) 29,000,000 new accounts added per year by *brokers or dealers in securities, and mutual funds.*

Estimated Total Annual Recordkeeping Burden: The estimated total annual PRA burden is 1,152,985 hours, as set out in Tables 2 and 3.

Estimated Total Annual Recordkeeping Cost: The estimated total annual PRA cost is $42,011,997, as set out in Table 8.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years.

[27] Net hourly burden and cost are the burden and cost a financial institution incurs to comply with requirements that are unique to the BSA, and that do not support any other business purpose or regulatory obligation of the financial institution. Burden for purposes of the PRA does not include the time and financial resources needed to comply with an information collection if the time and resources are for things a business (or other person) does in the ordinary course of its activities if the agency demonstrates that the reporting activities needed to comply are usual and customary. 5 CFR 1320.3(b)(2)

Part 4. Request for Comments

(a) Specific request for comments on the revised traditional annual PRA burden and cost.

FinCEN invites comments on any aspect of the revision of the traditional annual PRA burden, as set out in Part 2 of this notice. In particular, FinCEN seeks comments on the adequacy of: (i) FinCEN's assumptions underlying its estimate of the burden; (ii) the estimated number of hours required by each portion of the burden; and (iii) the organizational levels of the financial institution engaged in each portion of the burden, their estimated hourly remuneration, and the estimated proportion of participation by time at each level. FinCEN encourages commenters to include any publicly available source for alternative estimates or methodologies.

(b) Specific request for comments on the proposed criteria for determining the scope of a supplemental annual PRA hourly burden and cost estimate.

FinCEN invites comments on any aspect of the criteria for a future estimate of the supplemental annual PRA burden, as set out in Part 3 of this notice.

(c) Specific request for comments on the criteria and methodology needed to obtain information to realistically estimate the supplemental annual PRA hourly burden and cost.

FinCEN invites comments on the most appropriate and comprehensive means of questioning financial institutions about the hourly burden and cost attributable solely to CIP-related activities (*i.e.,* the hourly burden and cost of complying with the recordkeeping requirements imposed exclusively by the BSA, which are not used to satisfy contractual obligations, other regulatory requirements, or business purposes of the financial institution). For example, depending on the nature of the account, a financial institution may be collecting and maintaining some of the same customer identification information required by the CIP in order to satisfy other obligations including (i) protecting the financial institution from fraud against itself or its customers, (ii) complying with other non-BSA regulatory requirements such as those imposed by the specific federal functional regulator, or (iii) improving the financial institution's marketing efforts or the quality of its managerial information products.

The estimate of the annual PRA hourly burden and cost of the CIP must take into consideration only the effort involved in obtaining those data elements that are used exclusively for complying with CIP requirements. Given the obvious complexity in determining what portion of the effort to include in the estimate, FinCEN seeks comments from the public about how best to frame the questions and define the requirements, according to the business uses of financial institutions covered by this notice. Also, due to the evident difficulty involved in estimating the number of new accounts opened during the year, as a proxy for new accountholders subject to CIP requirements, FinCEN welcomes any suggestions as to how to derive this estimate by using publicly available financial information.

(d) Specific questions for comment associated with the five CIP requirements:

(1) *Written CIP—If a bank is required to have an AML program, the CIP must be part of the AML program.*

- On average, how long does it take your financial institution to revise its written CIP annually?
- Does the process require review and approval by senior management?
- How long does it take your financial institution to go through the internal governance process to get the CIP approved?
- How much time on an annual basis does the compliance team spend training the business units or other compliance members on the CIP and associated updates?

(2) *Identity verification procedures—the CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable.*

- On average how many new accounts does your financial institution open per year?
  - How many accounts are for new customers?
  - How many accounts are new personal accounts?
  - How many accounts are new business accounts?
- How long does it take your financial institution to open a new account for an existing customer?
- How long does it take your financial institution to conduct identity verification procedures for a new personal or business account?
- Is the collection of customer identification information exclusively to comply with the CIP requirements, or is it also to comply with other regulatory requirements or for other business reasons?

(3) *Recordkeeping—the CIP must include procedures for making and maintaining a record of all information obtained under the CIP requirements.*

- Are all CIP records stored electronically? If not, please provide details as to the type of storage method used.
- How long does it take to store a customer's CIP information electronically?
- How long does it take to store a customer's CIP information by other means?
- Is the process of storing CIP information an automated or manual process at your financial institution?
- Does your financial institution have to invest in specific technology to maintain these records? If so, what is the cost of implementation and maintenance annually?
- Is the technology exclusively to comply with the CIP, or is it also to comply with other regulatory requirements?

(4) *Consulting government lists—the CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency, and designated as such by Treasury in consultation with the Federal functional regulators.*

- How long does it take your financial institution to check a new customer against suspected terrorist lists issued by the Federal government?
- Do you use an automated system, a hybrid of an automated system and manual process, or a completely manual process to conduct the searches?
- Does your financial institution have to invest in specific technology to conduct the searches? If so, what is the cost of implementation and maintenance annually?
- Is the consultation of government lists exclusively to comply with the CIP requirements, or does it overlap with other regulatory requirements?
- What other regulatory or business requirements overlap with the CIP requirements for your financial institution?

(5) *Customer notice—the CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities.*

- How does you financial institution provide notification to customers of CIP requirements?
- Does your financial institution use a sign-in the institution's offices, notices contained in account opening documents, including electronic notification in the case of online account opening, or general notifications on the institution's website, or a combination of both?

• How often does your financial institution update the notice to customers regarding CIP?

• What governance process does the financial institution follow prior to making a new update?

(6) *The CIP is not required to, but may also include procedures specifying when a financial institution may rely on another financial institution to perform any of the financial institution's CIP procedures, if certain conditions are met.*

• What percentage of the time does your financial institution rely on another financial institution or associated affiliate to conduct CIP on new customers?

• What is the burden on your financial institution to vet another financial institution or associated affiliate, annually, in order to rely on them to conduct CIP? What are your vetting process criteria?

(e) General request for comments.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (i) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (v) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 7, 2020.

Michael Mosier,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2020–17694 Filed 8–12–20; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 8, 2020.

FOR FURTHER INFORMATION CONTACT: Cedric Jeans at 1–888–912–1227 or 901–707–3935.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Tuesday, September 8, 2020, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Cedric Jeans. For more information please contact Cedric Jeans at 1–888–912–1227 or 901–707–3935, or write TAP Office, 5333 Getwell Road, Memphis, TN 38118 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: August 7, 2020.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2020–17671 Filed 8–12–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 9, 2020.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Wednesday, September 9, 2020, at 1:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: August 7, 2020.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2020–17665 Filed 8–12–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's (TAP) Tax Forms and Publications Project Committee will be conducted. The TAP is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 9, 2020.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or (202) 317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Wednesday, September 9, 2020 at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Fred Smith. For more information please contact Fred Smith at 1–888–912–1227 or (202) 317–3087, or write

TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.*

Dated: August 7, 2020.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2020–17666 Filed 8–12–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 10, 2020.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Thursday, September 10, 2020, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: August 7, 2020.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2020–17664 Filed 8–12–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 24, 2020.

FOR FURTHER INFORMATION CONTACT: Gilbert Martinez at 1–888–912–1227 or (737) 800–4060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, September 24, 2020, at 1:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact Gilbert Martinez at 1–888–912–1227 or (737–800–4060), or write TAP Office 3651 S. IH–35, STOP 1005 AUSC, Austin, TX 78741, or post comments to the website: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: August 7, 2020.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2020–17667 Filed 8–12–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 9, 2020.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Wednesday, September 9, 2020 at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: August 7, 2020.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2020–17668 Filed 8–12–20; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products Residual Risk and Technology Review; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2016–0243; FRL–10009–65–OAR]

RIN 2060–AO66

National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Plywood and Composite Wood Products (PCWP) source category regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, the EPA is taking final action addressing periods of startup, shutdown and malfunction (SSM); adding electronic reporting; adding repeat emissions testing; and making technical and editorial changes. These final amendments include no revisions to the numerical emission limits in the rule based on the RTR. While the amendments do not result in reductions of emissions of hazardous air pollutants (HAP), this action results in improved monitoring, compliance, and implementation of the rule.

DATES: This final rule is effective on August 13, 2020. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of August 13, 2020. The incorporation by reference of certain other publications listed in the rule was approved by the Director of the Federal Register as of February 16, 2006.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0243. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov/.* 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. There is a temporary suspension of mail delivery to the EPA, and no hand deliveries are currently accepted. For further information and updates on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Ms. Katie Hanks, Sector Policies and Programs Division (E143–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2159; fax number: (919) 541–0516; and email address: *hanks.katie@epa.gov.* For specific information regarding the risk modeling methodology, contact Mr. James Hirtz, Health and Environmental Impacts Division (C539–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0881; fax number: (919) 541–0840; and email address: *hirtz.james@epa.gov.* For information about the applicability of the NESHAP to a particular entity, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–1395; and email address: *cox.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

AEGL acute exposure guideline level
CAA Clean Air Act
CDX Central Data Exchange
CEDRI Compliance and Emissions Data Reporting Interface
CEMS continuous emission monitoring systems
CFR Code of Federal Regulations
CMS continuous monitoring systems
EAV equivalent annualized value
EPA Environmental Protection Agency
ERT Electronic Reporting Tool
HAP hazardous air pollutants(s)
HQ hazard quotient
ICR Information Collection Request
km kilometer
MACT maximum achievable control technology
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
OSHA Occupational Safety and Health Administration
PCWP Plywood and Composite Wood Products
PDF portable document format
PRA Paperwork Reduction Act
PV present value
RATA relative accuracy test audit
RCO regenerative catalytic oxidizer
REL recommended exposure limit
RFA Regulatory Flexibility Act
RIN Regulatory Information Number
RTC Response to Comments
RTO regenerative thermal oxidizer
RTR residual risk and technology review
SSM startup, shutdown, and malfunction
the Court United States Court of Appeals for the District of Columbia Circuit
TOSHI target organ-specific hazard index
tpy tons per year
UMRA Unfunded Mandates Reform Act

Background information. On September 6, 2019, the EPA proposed revisions to the PCWP NESHAP based on our RTR. See 84 FR 47074. In this action, the EPA is finalizing decisions and revisions for the rule. We summarize some of the more significant comments we timely received regarding the proposed rulemaking and provide summaries of our responses in this preamble. A summary of all public comments on the proposal and the EPA's specific responses to those comments is available in the Response to Comments (RTC) document, *National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products (40 CFR part 63, subpart DDDD) Residual Risk and Technology Review, Final Amendments, Responses to Public Comments on September 6, 2019 Proposal,* Docket ID No. EPA–HQ–OAR–2016–0243. A ''track changes'' version of the regulatory language that incorporates the changes in this action is available in the docket.

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

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
C. Judicial Review and Administrative Reconsideration
II. Background
A. What is the statutory authority for this action?
B. What is the PCWP source category and how does the NESHAP regulate HAP emissions from the source category?
C. What changes did we propose for the PCWP source category in our September 6, 2019, proposal?
III. What is included in this final rule?
A. What are the final rule amendments based on the risk review for the PCWP source category?

B. What are the final rule amendments based on the technology review for the PCWP source category?
C. What are the final rule amendments addressing emissions during periods of SSM?
D. What other changes have been made to the NESHAP?
E. What are the effective and compliance dates of the standards?
IV. What is the rationale for our final decisions and amendments for the PCWP source category?
A. Residual Risk Review for the PCWP Source Category
B. Technology Review for the PCWP Source Category
C. SSM Provisions
D. Electronic Reporting
E. Repeat Emissions Testing
F. Biofilter Bed Temperature
G. Thermocouple Calibration
H. Non-HAP Coating Definition
I. Technical and Editorial Changes
J. Compliance Dates
V. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted
A. What are the affected facilities?
B. What are the air quality impacts?
C. What are the cost impacts?
D. What are the economic impacts?
E. What are the benefits?
F. What analysis of environmental justice did we conduct?
G. What analysis of children's environmental health did we conduct?
VI. Statutory and Executive Order Reviews
A. Executive Orders 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Cost
C. Paperwork Reduction Act (PRA)
D. Regulatory Flexibility Act (RFA)
E. Unfunded Mandates Reform Act (UMRA)
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR part 51
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
L. Congressional Review Act (CRA)

I. General Information

A. Does this action apply to me?

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

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

NESHAP and source category	NAICS [1] code
National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.	321999, 321211, 321212, 321219, 321213.

[1] North American Industry Classification System.

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

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

In addition to being available in the docket, an electronic copy of this final action will also be available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at: *https://www.epa.gov/stationary-sources-air-pollution/plywood-and-composite-wood-products-manufacture-national-emission.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents at this same website.

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

C. Judicial Review and Administrative Reconsideration

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit (the Court) by October 13, 2020. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce the requirements.

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

II. Background

A. What is the statutory authority for this action?

Section 112 of the CAA establishes a two-stage regulatory process to address emissions of HAP from stationary sources. In the first stage, we must identify categories of sources emitting one or more of the HAP listed in CAA section 112(b) and then promulgate technology-based NESHAP for those sources. ''Major sources'' are those that emit, or have the potential to emit, any single HAP at a rate of 10 tons per year (tpy) or more, or 25 tpy or more of any combination of HAP. For major sources,

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

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

In the second stage of the regulatory process, the CAA requires the EPA to undertake two different analyses, which we refer to as the technology review and the residual risk review. Under the technology review, we must review the technology-based standards and revise them ''as necessary (taking into account developments in practices, processes, and control technologies)'' no less frequently than every 8 years, pursuant to CAA section 112(d)(6). Under the residual risk review, we must evaluate the risk to public health remaining after application of the technology-based standards and revise the standards, if necessary, to provide an ample margin of safety to protect public health or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The residual risk review is required within 8 years after promulgation of the technology-based standards, pursuant to CAA section 112(f). In conducting the residual risk review, if the EPA determines that the current standards provide an ample margin of safety to protect public health, it is not necessary to revise the MACT standards pursuant to CAA section 112(f) and the EPA may readopt the MACT standards as residual risk standards.[1] For more information on the statutory authority for this rule, see 84 FR 47074 (September 6, 2019).

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

The EPA originally promulgated the PCWP NESHAP on July 30, 2004. The standards are codified at 40 CFR part 63, subpart DDDD. The PCWP industry consists of facilities engaged in the production of PCWP and/or kiln-dried lumber. Plywood and composite wood products are manufactured by bonding wood material (fibers, particles, strands, *etc.*) or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product. PCWP manufacturing facilities also include facilities that manufacture dry veneer and lumber kilns located at any facility. PCWP include (but are not limited to) plywood, veneer, particleboard, oriented strand board (OSB), hardboard, fiberboard, medium density fiberboard, laminated strand lumber, laminated veneer lumber, wood I-joists, kiln-dried lumber, and glue-laminated beams. As noted in the preamble to the proposed amendments, the PCWP source category covered by this MACT standard includes 230 major source facilities: 93 PCWP facilities, 121 lumber mills, and 16 facilities that produce both PCWP and lumber.

The affected source under the PCWP NESHAP is the collection of dryers, refiners, blenders, formers, presses, board coolers, and other process units associated with the manufacturing of PCWP. The NESHAP contains several compliance options for process units subject to the standards: (1) Installation and use of emissions control systems with an efficiency of at least 90 percent; (2) production-based limits that restrict HAP emissions per unit of product; and (3) emissions averaging that allows control of emissions from a group of sources collectively (at existing affected sources). These compliance options apply for the following process units: Fiberboard mat dryer heated zones (at new affected sources); green rotary dryers; hardboard ovens; press predryers (at new affected sources); pressurized refiners; primary tube dryers; secondary tube dryers; reconstituted wood product board coolers (at new affected sources); reconstituted wood product presses; softwood veneer dryer heated zones; rotary strand dryers; and conveyor strand dryers (zone one at existing affected sources, and zones one and two at new affected sources). In addition, the PCWP NESHAP includes work practice standards for dry rotary dryers, hardwood veneer dryers, softwood veneer dryers, veneer redryers, and group 1 miscellaneous coating operations (defined in 40 CFR 63.2292).

C. What changes did we propose for the PCWP source category in our September 6, 2019, proposal?

On September 6, 2019, the EPA published a proposed rulemaking in the **Federal Register** for the PCWP NESHAP, 40 CFR part 63, subpart DDDD, that took into consideration the RTR analyses. In the proposed rulemaking, we proposed revisions to the SSM provisions for the NESHAP in order to ensure that they are consistent with the decision of the Court in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), which vacated two provisions in EPA's 40 CFR part 63, subpart A—General Provisions, that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM: 40 CFR 63.6(f)(1) and (h)(1). We also proposed various other changes, including addition of electronic reporting requirements, addition of repeat emissions testing requirements, revisions to parameter monitoring requirements, and various technical and editorial changes.

III. What is included in this final rule?

This action finalizes the EPA's determinations pursuant to the RTR provisions of CAA section 112 for the PCWP source category. This action also finalizes other changes to the NESHAP, including SSM provisions, electronic reporting, additional emissions testing requirements, and technical and editorial changes.

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

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

The EPA proposed no changes to the PCWP NESHAP based on the risk review conducted pursuant to CAA section 112(f). We are finalizing our proposed determination that risks from the PCWP source category are acceptable, considering all of the health information and factors evaluated, and also considering risk estimation uncertainty. We are also finalizing our proposed determination that revisions to the current standards are not necessary to reduce risk to an acceptable level, to provide an ample margin of safety to protect public health, or to prevent an adverse environmental effect. As discussed further in section IV.A of this preamble, the EPA reviewed public comments and data revisions submitted during the public comment period but none of the information received affected our determinations. Therefore, we are not requiring additional controls in order to reduce risks and, thus, are not making any revisions to the existing standards under CAA section 112(f)(2). Instead, we are readopting the existing standards under CAA section 112(f)(2), while making other modifications under other authorities unrelated to risk.

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

We determined that there are no developments in practices, processes, and control technologies that warrant revisions to the MACT standards for this source category. In the proposal, the EPA noted a development in resin systems used to produce PCWP at some facilities but found that facilities generally have not altered their HAP emission control strategies to date as a result of resin changes and that it is not necessary, or supported based on available data, at this time, to amend the current standards. The EPA considered comments received during the public comment period regarding our technology review, however, these comments contained no new data or other information that affected our determinations. Therefore, we are not finalizing revisions to the MACT standards under CAA section 112(d)(6). Section IV.B of this preamble provides further details on our conclusion with respect to the technology review.

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

In its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and (h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously.

The EPA has eliminated the SSM exemption in this rule. Consistent with *Sierra Club* v. *EPA,* the EPA has established standards in this rule that apply at all times. The standards that apply during normal operation have been extended to apply at all times including SSM in most instances. However, in this final rule, the EPA has established work practice standards for specific types of startup and shutdown events as described in section IV.C of this preamble. The EPA has also revised Table 10 of this rule (the General Provisions applicability table) in several respects as is explained in more detail in section IV.C of this preamble. For example, we have eliminated the incorporation of the General Provisions' requirement that sources develop SSM plans. We have also eliminated or revised certain recordkeeping and reporting requirements that are related to the SSM exemption as described in detail in the proposed rulemaking and summarized again in section IV.C of this preamble.

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

Other changes to the NESHAP include:

1. Electronic reporting. As discussed at proposal, the EPA is finalizing amendments to the reporting requirements in the rule to require electronic reporting for notifications of compliance status, compliance test reports, and semiannual reports. Electronic reporting is discussed further in section IV.D of this preamble.

2. Repeat emissions testing. As discussed at proposal, the EPA is finalizing amendments to Table 7 to subpart DDDD of part 63 to require repeat testing every 5 years for process units controlled with control devices other than biofilters. The first of the 5-year repeat tests will be required within 3 years of the effective date of the final amendments. Repeat emissions testing is discussed further in section IV.E of this preamble.

3. Revisions to parameter monitoring requirements. As discussed at proposal, the EPA is finalizing amendments to biofilter bed temperature provisions in 40 CFR 63.2262(m)(1) and the thermocouple calibration requirements in 40 CFR 63.2269. The biofilter bed temperature provisions are discussed further in section IV.F of this preamble and the thermocouple calibration requirements are discussed further in section IV.G of this preamble.

4. Revisions to the non-HAP coating definition. The EPA is finalizing amendments to the non-HAP coating definition in 40 CFR 63.2292 with changes from the proposed revision. The non-HAP coating definition is discussed further in section IV.H of this preamble.

5. Technical and editorial changes. The EPA is finalizing technical and editorial changes, as discussed further in section IV.I of this preamble.

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

The revisions to the MACT standards being promulgated in this action are effective on August 13, 2020. The compliance date of the rule amendments for existing affected sources and other affected sources that commenced construction or reconstruction on or before September 6, 2019, is August 13, 2021. Affected sources that commenced construction or reconstruction after September 6, 2019, are new sources. New sources must comply with all of the standards immediately upon the effective date of the standard, August 13, 2020, or upon startup, whichever is later. All existing affected sources will have to continue to meet the current requirements of the NESHAP until the applicable compliance date of the amended rule.

Section IV.D of this preamble discusses electronic reporting and a semiannual reporting template that facilities must use within 1 year after it is posted in the EPA's Compliance and Emissions Data Reporting Interface (CEDRI). In addition, the EPA is finalizing new requirements to conduct repeat performance testing every 5 years for facilities using an add-on control system other than a biofilter (see section IV.E of this preamble). The first of the repeat performance tests must be conducted within 3 years after August 13, 2020, or within 60 months following the previous performance test, whichever is later.

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

For each issue, this section provides a description of what was proposed and what is being finalized for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses. Comment summaries for all comments and the EPA's specific responses can be found in the RTC document, available in Docket ID No. EPA–HQ–OAR–2016–0243.

A. Residual Risk Review for the PCWP Source Category

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

Pursuant to CAA section 112(f), the EPA conducted a risk review and presented the results for the review, along with our proposed decisions regarding risk acceptability and ample margin of safety, in the September 6, 2019, proposed rulemaking for the PCWP source category (84 FR 47074). The results of the risk assessment are presented briefly in Table 2 of this preamble and in the risk report titled *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Proposed Rule,* and sections III and IV of the proposal preamble (84 FR 47074, September 6, 2019) available in the docket for this action.

TABLE 2—INHALATION RISK ASSESSMENT SUMMARY FOR PLYWOOD AND COMPOSITE WOOD PRODUCTS SOURCE CATEGORY [1]

Number of facilities [2]	Maximum individual cancer risk (in 1 million) [3]		Population at increased risk of cancer ≥ 1-in-1 million		Annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI [4]		Maximum screening acute noncancer HQ [5]
	Based on . . .		Based on . . .		Based on . . .		Based on . . .		
	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Based on actual emissions level
233	30	30	204,000	230,000	0.03	0.03	0.8	0.8	4 (REL) 0.2 (AEGL–1)

[1] Based on actual and allowable emissions.
[2] Number of facilities evaluated in the risk assessment. Includes 230 operating facilities subject to 40 CFR part 63, subpart DDDD, plus three existing facilities that are currently closed but maintain active operating permits.
[3] Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.
[4] Maximum target organ-specific hazard index (TOSHI). The target organ with the highest TOSHI for the PCWP source category is the respiratory system.
[5] The maximum estimated acute exposure concentration was divided by available short-term threshold values to develop an array of hazard quotient (HQ) values. The acute HQ values shown use the lowest available acute threshold value, which in most cases is the recommended exposure limit (REL). When an HQ exceeds 1, the EPA also shows the HQ using the next lowest available acute dose-response value.

For the risk assessment conducted at proposal, the EPA estimated risks based on actual and allowable emissions from the PCWP source category. The results for the PCWP source category indicated that both the actual and allowable inhalation cancer risks to the individual most exposed are below the presumptive limit of acceptability of 100-in-1 million. The residual risk assessment for the PCWP category estimated cancer incidence rate at 0.03 cases per year (or one case every 33 years) based on both source category actual and allowable emissions. The estimated inhalation cancer risk to the individual most exposed to actual and allowable emissions from the source category was 30-in-1 million. The assessment showed that approximately 204,000 people faced an increased cancer risk equal to or above 1-in-1 million from source category actual emissions from 170 facilities. The number of people exposed to a cancer risk greater than 10-in-1 million from source category actual emissions is 650 people. The maximum chronic noncancer TOSHI due to inhalation exposures was less than 1 (0.8) for actual and allowable emissions from the source category. The results of the acute non-cancer refined analysis showed maximum acute HQs of 4 for acrolein and 2 for formaldehyde emissions based on the acute reference exposure level. Maximum cancer risk due to ingestion exposures estimated using health-protective risk screening assumptions are below 6-in-1 million for the Tier 2 fisher scenario and below 40-in-1 million for the Tier 2 rural gardener exposure scenario.[2] Considering all the health risk information and factors and the uncertainties discussed in the preamble to the proposed amendments (84 FR 47074, September 6, 2019), the EPA proposed that the risks posed by emissions from the PCWP source category are acceptable after implementation of the existing MACT standards.

As directed by CAA section 112(f)(2), the EPA also conducted an analysis to determine if the current emission standards provide an ample margin of safety to protect public health. Under the ample margin of safety analysis, the EPA considers all health factors evaluated in the risk assessment and evaluates the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs reviewed under the technology review) that could be applied to this source category to further reduce the risks (or potential risks) due to emissions of HAP identified in our risk assessment. The EPA did not identify methods for further reducing HAP emissions from the PCWP source category that would achieve meaningful risk reductions. Therefore, the EPA proposed that the current PCWP standards provide an ample margin of safety to protect public health and revision of the promulgated standards is not required. The EPA also concluded that an adverse environmental effect as a result of HAP emissions from this source category is not expected and, therefore, proposed that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. The results of the EPA's residual risk analysis conducted according to CAA section 112(f)(2) were discussed in the preamble to the proposed rulemaking (84 FR 47074, September 6, 2019), in the risk report for the proposed rulemaking titled *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk*

[2] As explained in the preamble for the proposed rulemaking, these multipathway risk estimates would be further reduced with Tier 3 screening.

and Technology Review Proposed Rule, Docket Item No. EPA–HQ–OAR–2016–0243–0179, and in the risk report for the final rule titled *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Final Rule,* in the docket for this action. The risk report for the final rule is unchanged from the risk report prepared for the proposed rulemaking.

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

The EPA has not changed any aspect of the risk assessment since the September 2019 proposal for the PCWP source category.

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

The EPA received several comments in support of and against the proposed residual risk review and our determination that no revisions were warranted under CAA section 112(f)(2). Generally, the commenters disagreeing with the risk review misunderstood the type of data used for the development of the risk review or suggested changes to the underlying risk assessment methodology. Some commenters noted the conservative nature of the underlying residual risk methodology. Commenters also submitted data revisions for 23 of the 233 modeled facilities. After reviewing the inventory revisions, the EPA concluded that 21 of the revisions would serve only to reduce modeled risk through reduced emissions or improved dispersion inputs. Further, the EPA concluded that neither of the two remaining inventory revisions would increase the maximum modeled risk for the PCWP source category or change our conclusions regarding risk acceptability or ample margin of safety. See the memorandum, *Review of Plywood and Composite Wood Products Emissions Inventory Revisions,* in the docket for this action for details on the inventory revisions submitted. After review of the comments and information submitted, we determined that no changes to the proposed residual risk assessment were necessary. The comments and our specific responses can be found in the RTC document, which is available in the docket for this action, Docket ID No. EPA–HQ–OAR–2016–0243.

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

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

Since proposal, neither the risk assessment nor our determinations regarding risk acceptability, ample margin of safety, or adverse environmental effects have changed. For the reasons explained in the proposed rulemaking, the EPA determined that the risks from the PCWP source category are acceptable, the current standards provide an ample margin of safety to protect public health, and more stringent standards are not necessary to prevent an adverse environmental effect. Therefore, the EPA is not revising the PCWP NESHAP (40 CFR part 63, subpart DDDD) to require additional controls pursuant to CAA section 112(f)(2) based on the residual risk review, and the EPA is readopting the existing standards under CAA section 112(f)(2).

B. Technology Review for the PCWP Source Category

The EPA's technology review focused on identifying developments in practices, processes, and control technologies for process units subject to standards under the NESHAP that have occurred since 2004 when emission standards were promulgated for the PCWP source category. The following process units were included in our review: Green rotary dryers, hardboard ovens, pressurized refiners, primary tube dryers, reconstituted wood product presses, softwood veneer dryer heated zones, rotary strand dryers, secondary tube dryers, conveyor strand dryers, fiberboard mat dryers, press predryers, and reconstituted wood product board coolers. The technological basis for the promulgated PCWP NESHAP was use of incineration-based or biofilter add-on controls to reduce HAP emissions. Incineration-based controls include regenerative thermal oxidizers (RTOs), regenerative catalytic oxidizers (RCOs), and incineration of process exhaust in an onsite combustion unit (referred to as ''process incineration''). In addition, the PCWP NESHAP contains production-based compliance options (PBCO) for process units with low emissions due to pollution prevention measures inherent in their process, an emissions averaging compliance option, and work practice requirements for selected process units. In the proposal, the EPA noted a development in resin systems used to produce PCWP at some facilities but found that facilities generally have not altered their HAP emission control strategies to date as a result of resin changes and that it is not necessary, or supported, based on available data, at this time, to amend the current standards. The EPA proposed that no revisions to the PCWP NESHAP are necessary pursuant to CAA section 112(d)(6).

The EPA received comments supporting and opposing our proposed determination from the technology review that no revisions to the standards are necessary under CAA section 112(d)(6). Several commenters agreed with the EPA's decision not to revise the current standards pursuant to CAA section 112(d)(6). Conversely, another commenter opposed our determination not to revise the standards and stated that the EPA failed to satisfy the CAA because it did not set emission standards for currently unrestricted HAP (such as emissions from the PCWP process units not currently subject to emissions limits) and regulating these emissions is ''necessary'' under the CAA. The commenter asserted that the EPA must review and follow the CAA and existing case law to ensure it sets a numerical limit for every regulated HAP in order to satisfy CAA sections 112(d)(2), (3), and (6). The commenter further asserted that the EPA must update standards when a development is identified, such as the use of lower HAP resins.

In response to the comments, the EPA maintains that our CAA section 112(d)(6) review of developments in the processes, practices, and controls applied to sources regulated under 40 CFR part 63, subpart DDDD, was complete. The technology review was based on responses to an Information Collection Request (ICR) conducted under CAA section 114, requiring a mandatory response. In addition to ICR data provided by respondents, the EPA requested and reviewed other information from sources to determine if there have been developments in practices, processes, or control technologies by PCWP facilities, as described in section 3 of the RTC document. The technology review was documented in the memorandum, *Technology Review for the Plywood and*

Composite Wood Products NESHAP, Docket Item No. EPA–HQ–OAR–2016–0243–0189.

Section 3 of the RTC document contains full responses to the comments received. Regarding the comment that the technology review did not address the unregulated sources, the EPA acknowledged in the preamble to the proposed rulemaking that there are unregulated sources with no-control MACT determinations, and we stated our plans to address those units in a separate action subsequent to the RTR at 84 FR 47077–47078. See section 9 of the RTC document for further discussion of our position regarding our obligations under CAA section 112(d)(6) with respect to unregulated sources.[3]

Overall, the EPA's review of the developments in technology for the process units subject to the PCWP NESHAP did not reveal any changes that require revisions to the emission standards under CAA section 112(d)(6). As discussed in the first paragraph in this section of the preamble, the PCWP rule was promulgated with multiple options for reducing HAP emissions to demonstrate compliance with the standard. The EPA found that facilities are using each type of control system or pollution prevention measure (such as lower-HAP resins) that was anticipated when the PCWP emissions standards were promulgated. The EPA did not identify any developments in practices, processes, or control technologies for the regulated units beyond those accounted for in the originally promulgated PCWP NESHAP.

Regarding lower-HAP resins, for the proposal, the EPA characterized changes in the type of resin systems used in the particleboard, MDF, and hardwood plywood segments of the PCWP industry due to the formaldehyde standards limiting emissions from these products[4] as a ''development'' within the context of CAA section 112(d)(6). The EPA explained in the proposal that as facilities conduct repeat testing, they may find that the inlet concentration of formaldehyde and methanol from their pressing operations has dropped if they are now using a different, lower-HAP resin system to comply with the California Air Resources Board (CARB) and Toxic Substances Control Act (TSCA) standards. The decrease in inlet concentration may allow for future use of the PBCO without an add-on control device, providing an existing compliance option in addition to the current add-on control device compliance option. The EPA also explained that while the CARB and TSCA standards are a ''development'' within the context of CAA section 112(d)(6), these rules do not necessitate revision of the previously-promulgated PCWP emission standards because the promulgated PCWP emission standards already include the PBCO provisions for pollution prevention measures such as lower-HAP resins. The EPA disagrees that because resin changes made by some mills were noted as a development in the technology review that this necessitates revisions to the standards without regard to how the development is already addressed within the previously-promulgated emission standards, to how it relates to control technologies used in the industry, or other relevant factors. For the PCWP source category, the EPA did not identify information suggesting the resin system changes have significantly altered the type of process units or HAP pollution control technologies used in the PCWP industry to date or have led to processes or practices that have not been accounted for in the promulgated PCWP NESHAP compliance options. As explained further in Section 3 of the RTC document, at present, limited HAP emissions data are available to compare PCWP manufacturing process emissions before and after implementation of resin changes to meet the product formaldehyde standards. Facilities made a variety of different resin system changes (if needed for their specific products) in response to the CARB and TSCA rules, and, therefore, no single broadly-applicable approach feasible for all mills was identified. The different resin system changes facilities made, coupled with the limited available HAP emissions data, ongoing use of add-on control technologies following resin system changes, and availability of PBCO in the PCWP NESHAP do not support revising the PCWP NESHAP. Therefore, the EPA concluded it is not, at this time, necessary or supportable under this CAA section 112(d)(6) review to change the promulgated PCWP NESHAP as a result of resin changes facilities made to meet the CARB and TSCA rules. If additional emissions information on resin changes or other changes made by facilities becomes available and indicates updates need to be made to standards in future technology reviews, the EPA will evaluate that information at that time. In summary, the EPA proposed, and is finalizing the conclusion that no revisions to the PCWP NESHAP are necessary pursuant to CAA section 112(d)(6). All amendments being made to the final NESHAP are for reasons other than to reflect developments under CAA section 112(d)(6).

C. SSM Provisions

Consistent with the 2008 decision in *Sierra Club* v. *EPA,* the EPA proposed eliminating the SSM exemption in this rule and instead proposed that the same standards that apply during normal operation also apply during SSM, except during specific periods of startup and shutdown as described in section IV.C.2 of this preamble. Additionally, the EPA proposed several revisions to Table 10 (the General Provisions applicability table), proposed eliminating the incorporation of the General Provisions' requirement that the source develop an SSM plan, and proposed eliminating and revising certain recordkeeping and reporting requirements related to the SSM exemption, all of which are further described in section IV.C.4 of this preamble.

1. Elimination of the SSM Exemption

As noted in section III.C of this preamble, in its 2008 decision in *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), the Court vacated portions of two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and (h)(1), holding that under section 302(k) of the CAA, emissions standards or limitations must be continuous in nature and that the SSM exemption violates the CAA's requirement that some CAA section 112 standards apply continuously. Consistent with the *Sierra Club* decision, the EPA proposed eliminating the SSM exemption in this rule from 40 CFR 63.2250 and to remove the incorporation of 40 CFR 63.6(f)(1). (40

[3] On April 21, 2020, as the Agency was preparing the final rule for signature, a decision was issued in *LEAN* v. *EPA,* 955 F. 3d. 1088 (D.C. Cir. 2020) in which the Court held that the EPA has an obligation to set standards for unregulated pollutants as part of technology reviews under CAA section 112(d)(6). At the time of signature, the mandate in that case had not been issued and the EPA is continuing to evaluate the decision.

[4] In 2008, the CARB finalized an Airborne Toxic Control Measure (ATCM) to reduce formaldehyde emissions from hardwood plywood, MDF, and particleboard. Consistent with the CARB ATCM, in July 2010, Congress passed the Formaldehyde Standards for Composite Wood Products Act, as title VI of TSCA, [15 U.S.C. 2697], requiring the EPA to promulgate a national rule. The EPA finalized the TSCA rule, Formaldehyde Emission Standards for Composite Wood Products, on December 12, 2016 (81 FR 89674), and finalized an implementation rule on February 7, 2018 (83 FR 5340). Compliance with the TSCA rule was required by December 2018. The CARB ATCM and the rule to implement TSCA title VI emphasize the use of low emission resins, including ultra-low-emitting formaldehyde and no added formaldehyde resin systems.

CFR 63.6(h)(1) was not applicable to this NESHAP.)

The EPA received comments supporting and opposing our proposal to eliminate the SSM exemption in the rule. Commenters opposed to eliminating the exemption stated that neither the CAA nor judicial precedent requires the EPA to delete the SSM provisions. According to these commenters, the best-performing facilities that are the basis for the MACT floor experience SSM events, and so it is appropriate for the EPA to recognize and account for those events, as it has in the existing PCWP MACT standards. One commenter noted that when the EPA promulgated the 2004 PCWP NESHAP, the EPA determined it was appropriate not to subject mills to the numerical emission limitations in those standards during SSM events, requiring instead that sources follow work practices to minimize emissions during such events, including developing and following an SSM plan. The commenter asserted that the EPA's proposal to eliminate 40 CFR 63.2250(a), and thereby require sources to meet the same emission limitations during periods of SSM, except for very limited cases (safety related shutdowns and brief periods during startup and shutdown of pressurized refiners), represents an unauthorized change to existing MACT standards, specifically claiming that it is not the product of the technology review described in the CAA, it is not required by case law, and it is inconsistent with decades of the EPA practice and judicial interpretations of NESHAP and new source performance standards. Conversely, a commenter in favor of the EPA's proposal to eliminate the SSM exemption argued that it is legally required and necessary in this rulemaking under CAA section 112(d), including CAA section 112(d)(6), for the EPA to remove the SSM exemptions for PCWP facilities as it has proposed to do because the CAA requires standards to apply continuously and the Court precedent (*Sierra Club* v. *EPA*) is a development since the prior standards were made.

The EPA acknowledges comments in support of the removal of the 40 CFR part 63, subpart DDDD, SSM exemption and we are promulgating our proposed SSM action. We disagree with comments suggesting that the legal precedent established in case law (*Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008) should not apply to subpart DDDD. The Court decision held that emission limits under CAA section 112 must apply continuously and meet minimum stringency requirements, even during periods of SSM. Consistent with the Court's decision and for the reasons explained in the proposal preamble at 84 FR 47092–47096, we are finalizing our proposal to eliminate the SSM language in subpart DDDD. As explained in the proposal, our SSM-related rule revisions are in response to the Court's vacatur of the SSM exemptions in 40 CFR 63.6(f)(1) and (h)(1). When incorporated into CAA section 112(d) regulations for specific source categories, these two provisions exempted sources from the requirement to comply with otherwise applicable MACT standards during periods of SSM. The Court's vacatur rendered those provisions null and void prior to this rulemaking. Eliminating reference to these provisions and other related General Provisions referenced in subpart DDDD reflects the vacatur by the Court. We also eliminated the rule specific SSM provisions in subpart DDDD, as discussed further in section IV.C.4 of this preamble. The specific changes in the language can be found in Docket ID No. EPA–HQ–OAR–2016–0243 in the document titled *Redline Version of 40 CFR Part 63, subpart DDDD Showing Final Changes.* However, we do not agree with the commenter who characterized the 2008 Court ruling as a ''development'' that compels elimination of the SSM exemption under CAA section 112(d)(6). The EPA is not and need not rely on CAA section 112(d)(6) in order to eliminate the exemption but is choosing to take action at this time to make the NESHAP consistent with the 2009 ruling. As discussed in section IV.C.2 below, we proposed and are promulgating work practice standards for specific startup and shutdown events. Therefore, all current subpart DDDD facilities affected by SSM must be in compliance with a standard at all times (*i.e.,* with either the normal operational standards or the work practices that apply during selected startup and shutdown periods) consistent with the *Sierra Club* v. *EPA* decision. Section IV.C.3 of this preamble provides further information on our position with respect to periods of malfunction.

2. Periods of Startup and Shutdown

In finalizing the standards in this rule, the EPA considered and proposed alternative actions to the simple removal of SSM provisions in the rule. As an alternative approach consistent with *Sierra Club* v. *EPA,* the EPA may designate different standards to apply during startup and shutdown. The EPA collected information with the PCWP ICR to use in determining whether applying the standards applicable under normal operations would be problematic for PCWP facilities during startup and shutdown. Facilities operating control systems generally operate the control systems while the process unit(s) controlled are started up and shut down. For example, RTOs and RCOs are warmed to their operating temperature set points using auxiliary fuel before the process unit(s) controlled startup, and the oxidizers continue to maintain their temperature until the process unit(s) controlled shutdown. Biofilters operate within a biofilter bed temperature range that will be more easily achieved during startup and shutdown with changes in biofilter bed temperature operating range discussed in section IV.F of this preamble. Based on the information collected, the EPA determined that PCWP facilities can meet standards applicable under normal operations at all times except during periods of safety-related shutdowns and pressurized refiner startups and shutdowns. To ensure that a CAA section 112 standard is met during all times, the EPA proposed alternate work practice standards for safety-related shutdowns and pressurized refiner startups and shutdowns. After considering comments on the proposed amendments, the EPA determined that an alternate work practice standard was also needed for direct-fired softwood veneer dryers undergoing startup or shutdown of gas-fired burners.

The following sections discuss the work practices the EPA is finalizing. Each work practice is designed to minimize emissions, in keeping with CAA requirements. All three work practices minimize the duration of time and circumstances under which they can be applied. Further, because all three work practices require the temporary suspension of material flow through the PCWP process, PCWP facilities are incentivized to minimize the use and duration of these work practices. Sections IV.C.2.a and b of this preamble discuss in more detail the work practice standards for safety-related shutdowns and pressurized refiner startup and shutdown, respectively, including comments received about the standards following proposal and the EPA's final decision regarding their requirements. Section IV.C.2.c of this preamble discusses the details of the work practice standard for direct-fired softwood veneer dryers undergoing startup or shutdown of gas-fired burners.

a. Safety-Related Shutdowns

As discussed in the preamble to the proposed rulemaking (84 FR 47093,

September 6, 2019) and further elaborated in the RTC document, safety-related shutdowns differ from routine, planned shutdowns where facilities can continue routing process unit emissions to the control device until the process unit is shut down. Safety-related shutdowns have been accounted for in the process design and are not necessarily frequent but are pre-determined remedial actions anticipated to occasionally occur to such a degree that they are also distinguished from malfunctions which are, by definition, infrequent and not reasonably preventable (40 CFR 63.2). Malfunctions are unpredictable and may require different types of remediation. For example, the PCWP process predictably shuts down when these events are triggered. Safety-related shutdowns must occur rapidly in the event of unsafe conditions such as a suspected fire in a process unit heating flammable wood material. When unsafe conditions are detected, facilities must act quickly to shut off fuel flow (or indirect process heat) to the system, cease addition of raw materials (*e.g.,* wood furnish, resin) to the process units, purge wood material and gases from the process unit, and isolate equipment to prevent loss of property or life and protect workers from injury. Because it is unsafe to continue to route process gases to the control system, the control system will be bypassed as the process quickly shuts down, in many cases automatically, through a system of interlocks designed to prevent dangerous conditions from occurring.

In order to clarify what constitutes a safety-related shutdown, the EPA proposed a new definition in 40 CFR 63.2292 defining a safety-related shutdown as an unscheduled shutdown of a process unit subject to a compliance option in Table 1B to 40 CFR part 63, subpart DDDD, (or a process unit with HAP control under an emissions averaging plan developed according to 40 CFR 63.2240(c)) during which time emissions from the process unit cannot be safely routed to the control system in place to meet the compliance options or operating requirements in subpart DDDD without imminent danger to the process, control system, or system operator. The EPA also proposed a work practice standard for safety-related shutdowns requiring facilities to follow documented site-specific procedures such as use of automated controls or other measures developed to protect workers and equipment to ensure that the flow of raw materials (such as furnish or resin) and fuel or process heat (as applicable) ceases and that material is removed from the process unit(s) as expeditiously as possible given the system design. These actions are taken by all (including the best-performing) facilities when safety-related shutdowns occur.

Comments were received both supporting and opposing the proposed work practice for safety-related shutdowns. Commenters in support of the standards stated that CAA section 112(h) allows the EPA to promulgate a design, equipment, work practice, or operational standard, or combination thereof, in two circumstances: (1) When HAP ''cannot be emitted through a conveyance designed and constructed to emit or capture such a pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law,'' and (2) when ''the application of measurement methodology . . . is not practicable due to technological and economic limitations.'' Commenters stated that safety-related shutdowns of process units with add-on control equipment present both of those circumstances and provided operational details summarized in Section 4.3 of the RTC document. The commenter explained that the best practice for controlling HAP emissions during such safety-related shutdowns is to minimize the duration of the event by promptly ceasing the addition of raw materials and heat to the process and removing materials from process equipment as soon as possible (although in some instances it is safer to have the material remain in the process equipment to contain a problem such as a fire).

A separate commenter opposed the EPA's proposed safety-related shutdown work practice standards, arguing that the EPA has not explained how the criteria under CAA section 112(h) are met to provide the EPA the statutory authority to set work practices. The commenter stated that the work practice standards the EPA proposed are too lax because they are written by the facilities with no requirement for approval by the EPA. The commenter contended that the work practices will not achieve ''maximum'' emission reduction because they only instruct facilities to protect workers and process equipment, with no reference to reducing air emissions. The commenter urged the EPA to clarify how recordkeeping requirements would apply in the context of work practice standards. The full comments and our responses pertaining to safety-related shutdowns are included in the RTC document. According to CAA section 112(h)(1), MACT standards may take the form of design, equipment, work practice, or operational standards ''if it is not feasible in the judgement of the Administrator to prescribe or enforce an emission standard.'' The phrase ''if it is not feasible to prescribe or enforce an emission standard'' is defined in CAA section 112(h)(2)(A) and (B) to mean any situation in which the Administrator determines that: (A) A HAP or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any federal, state or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

The EPA has determined that work practices are appropriate during safety-related shutdowns in the PCWP industry because facilities cannot capture and convey HAP emissions to a control device during these periods for safety reasons. The control device could serve as an ignition source if there is an upset in the oxygen concentration or buildup of other combustibles in the PCWP process or exhaust gas collection system (*e.g.,* combustible gas, condensed pitch on ductwork if moisture-laden gases in the system are allowed to cool, or wood dust) due to various conditions (*e.g.,* if PCWP process equipment or pneumatic conveying systems become plugged). If there are sparks or fire in the PCWP process unit, conveyance, or the control device, the equipment could be damaged if exhaust continues to be routed from the PCWP process unit to the control device. A PCWP dryer or control device may experience an over-temperature condition indicative of a fire and triggering rapid equipment isolation. Thus, conveying emissions from the PCWP process unit to the control device is not technically feasible during safety-related shutdowns.

Further, application of measurement methodology is not practicable due to technological and economic limitations. Safety-related shutdowns are brief events that are incorporated into the process design for safety reasons but are not desirable operating conditions that constitute normal operations. Even if staged especially for an emissions measurement (which is economically impracticable due to lost production), the duration of safety-related shutdowns is necessarily brief (*i.e.,* minutes), less than the 1 hour it takes to collect a single emissions measurement sample if the equipment is set up and measurement contractors are onsite ready to sample, let alone the 3 hours needed for a full emissions test. Because

a full emissions measurement sample cannot be obtained during a safety-related shutdown, application of measurement methodology is not practicable due to technological limitations in addition to being economically impracticable. Therefore, it is the EPA's determination that PCWP-industry safety-related shutdowns meet the criteria in CAA section 112(h)(2)(B).

Based on our authority to set work practices, the EPA is finalizing a definition of ''safety-related shutdown'' in 40 CFR 63.2292 and finalizing a work practice for these shutdown events. The work practice is designed to be consistent with actions commonly undertaken by facilities to protect plant personnel, production equipment, and control equipment from dangerous circumstances like fires and explosions. The final work practice requires facilities to follow documented site-specific procedures such as use of automated controls or other measures developed to protect workers and equipment to ensure that the flow of raw materials (such as furnish or resin) and fuel or process heat (as applicable) ceases and that material is removed from the process unit(s) as expeditiously as possible given the system design to reduce air emissions. The phrase ''to reduce air emissions'' was added to the standard to address the concern expressed by one commenter that the work practice should direct facilities to consider air quality. The actions required by the safety-related shutdown work practice represent the maximum degree of emissions reduction achievable because they limit the amount of time, as well as the flow of raw materials and fuel into the process, and, therefore, emissions from the process undergoing safety-related shutdown. Rule language relating to the safety-related shutdown work practice was strengthened for the final rule in response to the commenter's concern that the EPA is giving full discretion to the facilities to develop their safety-related shutdown work practices for their own equipment configurations without oversight by the EPA. To strengthen the standard, the EPA added an initial compliance requirement to Table 6 of the final rule to clarify that facilities must have a record of safety-related shutdown procedures available for inspection by the delegated authority upon request. In addition, a recordkeeping requirement was added to Table 8 of the final rule to ensure documentation is available to track when the work practice is used, consistent with the proposed requirement under 40 CFR 63.2282(a)(2)(i). Finally, a reporting requirement was added to 40 CFR 63.2281(c)(4) to require facilities to report the number of instances and total amount of time during the reporting period when the safety-related shutdown work practice is used. If the safety-related shutdown work practice is used for more than 100 hours during a reporting period, the facility must report the date, time, and duration of each instance when the work practice was used. The EPA has concluded that these initial compliance and ongoing recordkeeping and reporting measures are sufficient to provide delegated authorities with information needed for oversight.

In addition, to clarify requirements, 40 CFR 63.2250(f)(6) was added to the final rule to state that the otherwise applicable compliance options, operating requirements, and work practice requirements (in rows 1 through 5 of Table 3 to 40 CFR part 63, subpart DDDD) do not apply when the startup/shutdown work practices apply (*i.e.,* the work practices in rows 6 through 8 of Table 3 to subpart DDDD for safety-related shutdown, pressurized refiner startup and shutdown, and softwood veneer dryer gas-burner relights). Thus, compliance with the startup/shutdown work practices (in Table 3 to subpart DDDD, rows 6 through 8) does not constitute a failure to meet the otherwise applicable compliance options, operating requirements, and work practice requirements because these requirements do not apply while the startup/shutdown work practices apply. Finally, 40 CFR 63.2271(b)(4) was added to clarify that instances when the startup/shutdown work practice requirements are used (as reported under 40 CFR 63.2281(c)(4)) are not considered to be deviations from (or violations of) the otherwise applicable compliance options, operating requirements, and work practice requirements (in rows 1 through 5 of Table 3 to subpart DDDD) as long as facilities do not exceed the minimum amount of time necessary for these events.

b. Pressurized Refiner Startups and Shutdowns

Pressurized refiners use steam to heat and soften wood under pressure to grind it apart between rotating discs into fibers. Pressurized refiners discharge wood fiber and exhaust gases from refining directly into a primary tube dryer. Pressurized refiners cannot be vented through the dryer to the control system (*i.e.,* the dryer control system) for a brief time after they are initially fed wood material during startup and as wood material clears the refiner during shutdown because they are not producing useable fiber suitable for drying or producing PCWP products (hardboard or MDF). During this time, instead of the pressurized refiner output being discharged into the dryer, exhaust is vented to the atmosphere (*e.g.,* through an abort cyclone) and the wood is directed to a reclaim bin for storage and, commonly, recycling back into the refining process once it is running steadily. No resin is mixed with the off-specification material and the time periods are short (*e.g.,* 15 minutes or less) before the pressurized refiner begins to discharge wood fiber and exhaust through the dryer and when the refiner is shutting down.

The EPA proposed a work practice requirement in Table 3 of the rule (40 CFR part 63, subpart DDDD) to apply during pressurized refiner startup and shutdown that limits the amount of time (and, thus, emissions) when wood is being processed through the system while exhaust is not routed through the dryer to its control system. This practice is consistent with how the best-performing facilities complete startup and shutdown of pressurized refiners. The proposed work practice stated that facilities must route exhaust gases from the pressurized refiner to its control system no later than 15 minutes after furnish is fed from the pressurized refiner to the tube dryer when starting up, and no more than 15 minutes after furnish ceases to be fed to the pressurized refiner when shutting down.

Comments were received both supporting and opposing the pressurized refiner startup and shutdown work practice standard. Commenters supporting the work practice stated that periods of startup and shutdown of pressurized refiners meet the CAA section 112(h) criteria for establishing a work practice standard, while commenters opposing the work practice argued that the EPA does not have statutory authority to apply work practice standards instead of numerical emissions limits to pressurized refiner startup and shutdown periods.

Commenters in support of the EPA's proposed work practice standard for startup and shutdown of pressurized refiners noted that the language of the standard in Table 3 to 40 CFR part 63, subpart DDDD appears to have a typographical error. The commenters suggested rewording the standard in Table 3 so that it instructs facilities to route exhaust gases from the pressurized refiner to the dryer control system no

later than 15 minutes after wood is fed to the pressurized refiner when starting up and to stop wood flow to the pressurized refiner no more than 15 minutes after wood fiber stops being fed to the dryer from the pressurized refiner. The commenter opposing the work practice standard also questioned the timing and recordkeeping requirements. The full comments and our responses pertaining to pressurized refiners are included in the RTC document.

In response to these comments, the EPA concluded pressurized refiner startup and shutdown events meet the criteria in CAA section 112(h)(2)(B). Pressurized refiners are a particular class of sources where emissions are associated with wood processed through the refiner. Pressurized refiners cannot discharge unusable fiber through the tube dryer and its control system during startup and shutdown. Because venting through the pressurized refiner abort cyclone during startup and shutdown of pressurized refiners typically lasts 15 minutes or less, there are technological limitations to measuring emissions because HAP measurement methods require a 1-hour sampling time per test run, and a total of three test runs. The only way to obtain the required sample would be to operate in abort mode for each 1-hour sampling time. However, abort ''bins'' used to collect the off-spec wood furnish dumped from the system are not designed like material collection bins or silos for useable furnish at wood products facilities. Instead, the abort ''bins'' are often areas where off-spec fiber is dumped on the ground between concrete wind-breaks where it is removed with a front-end loader. Such areas do not have the capacity for dumping large amounts of fiber as would be needed to stage an event for 1 to 3 hours of testing, presenting another technological limitation. Staging abort dumping of 1 to 3 hours of fiber production also presents obvious economic limitations due to lost production for that time and loss or degradation of valuable fiber raw material. Finally, measuring emissions during pressurized refiner startup and shutdown is impractical because the PCWP NESHAP requires emissions measurement under representative operating conditions that are the conditions under which the process unit typically operates, excluding periods of startup and shutdown. Therefore, the EPA is finalizing a work practice for pressurized refiner startup and shutdown periods.

The EPA agrees that the wording of the proposed work practice standard for pressurized refiners in Table 3 needed clarification and has rewritten the standard for the final rule to instruct facilities to route exhaust gases from the pressurized refiner to its dryer control system no later than 15 minutes after wood is fed to the pressurized refiner during startup, and to stop wood flow into the pressurized refiner no more than 15 minutes after wood fiber and exhaust gases from the pressurized refiner stop being routed to the dryer during shutdown. In addition, we strengthened the work practice for startup/shutdown of pressurized refiners in the final rule by clarifying when the startup/shutdown work practice applies in 40 CFR 63.2250(f)(6), adding an initial compliance requirement to Table 6 of 40 CFR part 63, subpart DDDD, and adding a recordkeeping requirement to Table 8 of subpart DDDD to track when the work practice is used, consistent with the proposed requirement under 40 CFR 63.2282(a)(2)(i). Continuous compliance and reporting provisions were also added in 40 CFR 63.2271(b)(4) and 63.2281(c)(4), respectively, to provide clarity and aid in enforceability of the work practice requirement.

c. Veneer Dryer Burner Relights

An issue with veneer dryer burner relights stemming from removal of the SSM exemption was raised during the comment period for the proposed amendments. The EPA received a comment seeking clarification for direct-fired softwood veneer dryers undergoing relights of gas-fired burners. Specifically, the commenter noted that 40 CFR 63.2250(d) of the current PCWP rule defines shutoff of direct-fired burners resulting from partial or full production stoppages as shutdowns and the lighting or re-lighting of any one or all gas burners in direct-fired softwood veneer dryers as startups and not a malfunction. The commenter noted that the EPA proposed no changes to 40 CFR 63.2250(d) which was originally included in the PCWP rule to clarify that veneer dryer burner relights are not malfunctions due to their frequency. In the 2004 promulgated standard, these startup/shutdown events were required to be addressed under the SSM plan. The commenter explained that following the flame out of the burner, the dryer could contain non-combusted natural gas that must be purged prior to safely re-lighting the gas burners. Non-combusted natural gas cannot be exhausted to the control device due to safety concerns and must be vented along with whatever process emissions are in the dryer. The length of the purge varies based on system design, but only lasts a matter of minutes. Emissions are routed to the control system as expeditiously as possible following the burner re-light. Therefore, the commenter stated a dryer gas burner re-lighting startup work practice is needed for the same reasons as a safety shutdown work practice. However, because 40 CFR 63.2250(d) deals with dryer re-lights by defining them as startups, and the proposed rulemaking no longer contains a general exemption for startups, the commenter stated that some provision is needed for veneer dryer gas burner lighting and re-lighting.

In response to this comment, the EPA added a work practice to Table 3 of the final rule to clarify the requirements surrounding softwood veneer dryer gas-fired burner relights to ensure a standard applies continuously once the SSM plan is no longer required. The work practice requires direct-fired softwood veneer dryers undergoing startup or shutdown of gas-fired burners to cease feeding green veneer into the softwood veneer dryer and minimize the amount of time direct gas-fired softwood veneer dryers are vented to the atmosphere due to the conditions described in 40 CFR 63.2250(d). Related text was added to 40 CFR 63.2250(f) noting the work practice in Table 3 of 40 CFR part 63, subpart DDDD, applies when the otherwise applicable compliance options and operating requirements in the rule cannot be met. An initial compliance requirement was added to Table 6 of subpart DDDD to have a record of the procedures for startup and shutdown of softwood veneer dryer gas-fired burners available for inspection upon request by the delegated authority. In addition, a recordkeeping requirement was added to Table 8 of subpart DDDD to track when the work practice is used, consistent with the proposed requirement under 40 CFR 63.2282(a)(2)(i). Continuous compliance and reporting provisions were also added in 40 CFR 63.2271(b)(4) and 63.2281(c)(4), respectively, to provide clarity and aid in enforceability of the work practice requirement. Conforming changes to refer to the veneer dryer burner relight work practice with the other startup/shutdown work practices were also made throughout the rule.

Further clarification with respect to 40 CFR 63.2250(d) is needed as a result of our proposal to remove the SSM exemption (including the SSM plan). The EPA determined that a work practice is appropriate during direct-fired softwood veneer dryer startups/shutdowns of gas-fired burners because the conditions of CAA section 112(h)(2)(A) and (B) are both present during veneer dryer burner relights.

Facilities cannot capture and convey HAP emissions to a control device during these periods for safety reasons. The control device for the veneer dryer could serve as an ignition source if there is an upset in the oxygen concentration or increase in the natural gas concentration in the system. Thus, is it not technically feasible for HAP emissions to be conveyed to the control device during startups/shutdowns associated with softwood veneer dryer gas-burner relights. Further, application of measurement methodology is not practicable due to technological and economic limitations. Softwood veneer dryer burner relights are brief events that take less than the 1 hour it takes to collect a single emissions measurement sample if the equipment is set up and measurement contractors are onsite ready to sample, let alone the 3 hours needed for a full emissions test. Because a full emissions measurement sample cannot be obtained while softwood veneer dryers are undergoing gas-burner relights, application of measurement methodology is not practicable due to technological limitations. In addition, attempting to stage softwood veneer dryer burner relights for purposes of emissions measurement is economically impracticable because veneer is not being dried or moving through the veneer dryer when the burners are not lit, resulting in a production loss during testing. Therefore, the EPA concludes that direct-fired softwood veneer dryers undergoing startup/shutdown of gas-fired burners meet the criteria in CAA section 112(h)(2)(B).

3. Periods of Malfunction

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment (40 CFR 63.2) (Definition of malfunction). The EPA interprets CAA section 112 as not requiring emissions that occur during periods of malfunction to be factored into development of CAA section 112 standards and this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp.* v. *EPA,* 830 F.3d 579, 606–610 (2016). Under CAA section 112, emissions standards for new sources must be no less stringent than the level ''achieved'' by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation ''achieved'' by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level ''achieved'' by the best performing sources when setting emission standards. As the Court has recognized, the phrase ''average emissions limitation achieved by the best performing 12 percent of'' sources ''says nothing about how the performance of the best units is to be calculated.'' *Nat'l Ass'n of Clean Water Agencies* v. *EPA,* 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance that occurs during routine operations of a source. A malfunction is a failure of the source to perform in a ''normal or usual manner'' and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

As the Court recognized in *U.S. Sugar Corp,* accounting for malfunctions in setting standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. *Id.* at 608 (''the EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances''). As such, the performance of units that are malfunctioning is not ''reasonably'' foreseeable. See *e.g., Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (''The EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to 'invest the resources to conduct the perfect study.'''). See also, *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent removal goes off-line as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source's emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA's approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible. For example, in the Petroleum Refinery Sector RTR, the EPA established a work practice standard for unique types of malfunction that result in releases from pressure relief devices or emergency flaring events because the EPA had information for that source category to determine that such work practices reflected the level of control that applies to the best performers. 80 FR 75178, 75211–14 (December 1, 2015). In the proposed rulemaking for the PCWP, the EPA did not propose a work practice standard for malfunctions but instead stated that the EPA would consider whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions. The EPA encouraged commenters to provide any such information.

Numerous comments were received supporting and opposing the EPA's decision not to set a standard for malfunctions. One commenter opposed to the EPA's decision stated that there are several options the EPA could use

for setting emission standards under CAA section 112 that would apply during malfunction events. For example, the commenter stated that the EPA might be able to establish a numerical emission limitation that applies at all times but has an averaging time of sufficient duration that short, infrequent spikes in emissions due to malfunctions would not cause the source to exceed the emission limitation (while at the same time ensuring that the source does not operate in a way that causes frequent, lengthy excursions above the normal controlled emission rate). The EPA also could use the flexibility accorded by CAA section 302(k) (which defines ''emission limitation'' and ''emission standard'' to include ''any requirement relating to the operation or maintenance of a source to ensure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under'' the CAA) to address emissions during malfunction events through operational requirements rather than by applying the same limits on pollutant emissions that apply during normal operations. Similarly, the commenter stated the EPA has grounds to exercise its authority under CAA section 112(h) to promulgate a design, equipment, work practice, or operational standard, or combination thereof, because it is not feasible to prescribe or enforce an emission standard. The commenter noted that even if the EPA does not identify a set of specific work practices that all affected facilities can follow that represent best practices for minimizing emissions during malfunctions, the EPA might instead be able to address malfunctions through a set of criteria that allows facilities to develop and follow a site-specific plan for minimizing the extent and duration of excess emissions during malfunctions. The commenter suggested that the EPA might use several of these approaches in combination and stated that accommodating malfunctions need not result in either an exemption or an increased numerical emission limitation. The commenter urged the EPA to use its authority under CAA sections 112 and 302(k) to address malfunctions in a reasonable, CAA section 112-compliant manner.

Conversely, another commenter supported the EPA's proposed removal of unlawful SSM exemptions in all forms because the CAA requires standards to apply continuously, and the Court precedent is a development since the prior standards were issued.

After considering all comments, the EPA is not finalizing a separate standard for periods of malfunction. In the PCWP proposed rulemaking, we requested comment and information to support the development of a work practice standard during periods of malfunction, but we did not receive sufficient information, including additional quantitative emissions data, on which to base a standard for periods of malfunction. Absent sufficient information, it is not reasonable at this time to establish a work practice standard for malfunctions for this source category.

4. Revisions to Table 10 to Subpart DDDD of Part 63

The EPA proposed several specific revisions to Table 10 to subpart DDDD of part 63 (the General Provisions table) to establish standards in this rule that apply at all times. The EPA is finalizing the amendments as proposed, with the clarifications noted in the following sections. The specific revisions are described in the remainder of this section.

a. General Duty (40 CFR 63.2250)

The EPA is finalizing the General Provisions table (Table 10) entry for 40 CFR 63.6(e)(1) and (2) by redesignating it as 40 CFR 63.6(e)(1)(i) and changing the ''yes'' in column 4 to a ''no'' in column 5 which was added to specify requirements 1 year after the effective date of the final amendments. Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. The EPA is instead adding a general duty regulatory text at 40 CFR 63.2250 that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations, startup and shutdown, and malfunction events in describing the general duty. Therefore, the language the EPA is finalizing for 40 CFR 63.2250 does not include that language from 40 CFR 63.6(e)(1).

The EPA is also revising the General Provisions table (Table 10) by adding an entry for 40 CFR 63.6(e)(1)(ii) and including a ''no'' in column 5. Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.2250.

b. SSM Plan

The EPA is finalizing revisions to the General Provisions table (Table 10) to add an entry for 40 CFR 63.6(e)(3) by changing the ''yes'' in column 4 to a ''no'' in column 5. Generally, the paragraphs under 40 CFR 63.6(e)(3) require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is finalizing removal of the SSM exemptions. Therefore, affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and, thus, the SSM plan requirements are no longer necessary.

c. Compliance With Standards

The EPA is finalizing revisions to the General Provisions table (Table 10) entry for 40 CFR 63.6(f)(1) by changing the ''yes'' in column 4 to a ''no'' in columns 4 and 5. The final revision in column 4 refers to 40 CFR 63.2250(a). The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed in section IV.C.1 of this preamble, the Court in *Sierra Club* v. *EPA* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with the Court decision, the EPA is finalizing the revised standards in this rule to apply at all times.

The EPA is finalizing revisions to the General Provisions table (Table 10) entry for 40 CFR 63.6(h)(1) through (9) by redesignating it as 40 CFR 63.6(h)(1) and changing the ''NA'' in column 4 to a ''no'' in column 5. The current language of 40 CFR 63.6(h)(1) exempts sources from opacity standards during periods of SSM. As discussed in section IV.C.1 of this preamble, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with the Court decision, the EPA is finalizing the revised standards in this rule to apply at all times.

d. Performance Testing (40 CFR 63.2262)

The EPA is finalizing revisions to the General Provisions table (Table 10) entry for 40 CFR 63.7(e)(1) by changing the ''yes'' in column 4 to a ''no'' in column 5. Section 63.7(e)(1) describes performance testing requirements. The

EPA is finalizing instead the addition of a performance testing requirement at 40 CFR 63.2262(a) and (b). The performance testing requirements the EPA is adding differ from the General Provisions performance testing provisions in several respects. The regulatory text does not include the language in 40 CFR 63.7(e)(1) that restated the SSM exemption. The finalized performance testing provisions remove reference to 40 CFR 63.7(e)(1), reiterate the requirement that was already included in the PCWP rule to conduct emissions tests under representative operating conditions, and clarify that representative operating conditions excludes periods of startup and shutdown. As in 40 CFR 63.7(e)(1), performance tests conducted under this subpart should not be conducted during malfunctions because conditions during malfunctions are not representative of normal operating conditions. The EPA is finalizing added language that requires the owner or operator to record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions are representative. Section 63.7(e) requires that the owner or operator make available to the Administrator such records ''as may be necessary to determine the condition of the performance test'' upon request but does not specifically require the information to be recorded. The added regulatory text to this provision that the EPA is finalizing builds on that requirement and makes explicit the requirement to record the information.

The EPA is also finalizing the definition of ''representative operating conditions'' in 40 CFR 63.2292 to clarify that it excludes periods of startup and shutdown. Representative operating conditions include a range of operating conditions under which the process unit and control device typically operate and are not limited to conditions of optimal performance of the process unit and control device.

e. Monitoring

The EPA is finalizing revisions to the General Provisions table (Table 10) entry for 40 CFR 63.8(c)(1)(i) and (iii) by changing the ''yes'' in column 4 to a ''no'' in column 5. The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary in light of other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

The EPA is finalizing revisions to the General Provisions table (Table 10) by adding an entry for 40 CFR 63.8(d)(3) and including a ''no'' in column 5. The final sentence in 40 CFR 63.8(d)(3) refers to the General Provisions' SSM plan requirement which is no longer applicable. The EPA is finalizing adding to the rule at 40 CFR 63.2282(f) text that is identical to 40 CFR 63.8(d)(3) except that the final sentence is replaced with the following sentence: ''The program of corrective action should be included in the plan required under 40 CFR 63.8(d)(2).''

f. Recordkeeping (40 CFR 63.2282)

The EPA is finalizing revisions to the General Provisions table (Table 10) entry for 40 CFR 63.10(b)(2)(i) through (iv) by redesignating it as 40 CFR 63.10(b)(2)(i) and changing the ''yes'' in column 4 to a ''no'' in column 5. Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. The EPA is finalizing instead the addition of recordkeeping requirements to 40 CFR 63.2282(a). When a source is subject to a different standard during startup and shutdown, it will be important to know when such startup and shutdown periods begin and end to determine compliance with the appropriate standard. Thus, the EPA is finalizing adding language to 40 CFR 63.2282(a) requiring that sources subject to an emission standard during startup or shutdown that differs from the emission standard that applies at all other times must record the date, time, and duration of such periods.

The EPA is finalizing revisions to the General Provisions table (Table 10) by adding an entry for 40 CFR 63.10(b)(2)(ii) and including a ''no'' in column 5. Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. The EPA is finalizing the addition of such requirements to 40 CFR 63.2282(a). The final regulatory text the EPA is adding differs from the General Provisions it is replacing in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment. The EPA is finalizing this requirement to apply to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the ''occurrence.'' The EPA is also finalizing adding to 40 CFR 63.2282(a) a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the compliance option in 40 CFR 63.2240 the source failed to meet (including the compliance options in Table 1A or B to 40 CFR part 63, subpart DDDD, or the emissions averaging compliance option), and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is finalizing the requirement that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard. For each failure to meet an operating requirement in Table 2 to subpart DDDD or work practice requirement in Table 3 to subpart DDDD, facilities must maintain sufficient information to estimate the quantity of each regulated pollutant emitted over the emission limit. This information must be sufficient to provide a reliable emissions estimate if requested by the Administrator.

The EPA is finalizing revisions to the General Provisions table (Table 10) by adding an entry for 40 CFR 63.10(b)(2)(iv) and including a ''no'' in column 5. When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.2282(a).

The EPA is finalizing revisions to the General Provisions table (Table 10) by adding 40 CFR 63.10(b)(2)(v) to the entry for 40 CFR 63.10(b)(2)(iv) and including a ''no'' in column 5. When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

The EPA is finalizing revisions to the General Provisions table (Table 10) by adding an entry for 40 CFR 63.10(c)(15) and including a ''no'' in column 5. The EPA is finalizing that 40 CFR

63.10(c)(15) no longer apply. When applicable, the provision allows an owner or operator to use the affected source's SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is finalizing eliminating this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

g. Reporting (40 CFR 63.2281)

The EPA is finalizing revisions to the General Provisions table (Table 10) entry for 40 CFR 63.10(d)(5) by redesignating it as 40 CFR 63.10(d)(5)(i) and changing the ''yes'' in column 4 to a ''no'' in column 5. Section 63.10(d)(5)(i) describes the reporting requirements for SSM events. To replace the General Provisions reporting requirement, the EPA is finalizing adding reporting requirements to 40 CFR 63.2281(d) and (e). The replacement language differs from the General Provisions requirement in that it eliminates periodic SSM reports as a stand-alone report. The EPA is finalizing language that requires sources that fail to meet an applicable compliance option in 40 CFR 63.2240 at any time to report the information concerning such events in the semiannual compliance report already required under this rule. The EPA is finalizing that the report must contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is finalizing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

A commenter on the proposed rulemaking stated that facilities may not have information to estimate emissions resulting from a deviation from an operating parameter limit (*e.g.,* low oxidizer or biofilter temperature), and requested that emissions estimates only be required to be recorded or reported for failure to meet an emission limit. As explained in the RTC document included in the docket, EPA agrees that precise measurement of PCWP process unit emissions during an operating requirement deviation under the PCWP NESHAP is challenging unless the failure occurs during a performance test. Therefore, 40 CFR 63.2281(e)(12) was updated for the final rule to require reporting of an emission estimate only for failures to meet the numerical emission compliance options in 40 CFR 63.2240, including the compliance options in Table 1A or 1B of subpart DDDD or the emissions averaging compliance option. As noted in section IV.C.4.f of this preamble, 40 CFR 63.2282(a) requires recordkeeping of sufficient information to provide an emissions estimate associated with failure to meet an operating or work practice requirement, if requested by the Administrator.

The EPA will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The finalized amendments, therefore, eliminate the cross-reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements.

The EPA is finalizing revisions to the General Provisions table (Table 10) by adding an entry for 40 CFR 63.10(d)(5)(ii) and including a ''no'' in column 5. Section 63.10(d)(5)(ii) describes an immediate report for SSM events when a source failed to meet an applicable standard but did not follow the SSM plan. The EPA will no longer require owners or operators to report when actions taken during an SSM event were not consistent with an SSM plan, because plans would no longer be required.

Also, the EPA is removing and reserving 40 CFR 63.2281(e)(1) which required reporting of the date and time when each malfunction started and stopped. As discussed in section IV.C.4.f of this preamble, reporting is required for deviations from the applicable standard as opposed to every malfunction occurrence regardless of whether it results in a failure to meet the standard. Section 40 CFR 63.2281(e)(4) requires reporting of the date and time each deviation started and stopped, and whether each deviation occurred during a period of SSM.

D. Electronic Reporting

The EPA proposed that owners or operators of PCWP facilities submit electronic copies of required performance test reports, performance evaluation reports for continuous monitoring systems (CMS) measuring relative accuracy test audit (RATA) pollutants (*i.e.,* total hydrocarbon monitors), selected notifications, and semiannual reports through the EPA's Central Data Exchange (CDX) using the CEDRI. The EPA proposed that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website [5] at the time of the test be submitted in the format generated through the use of the ERT and that other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT. Similarly, performance evaluation results of CMS measuring RATA pollutants that are supported by the ERT at the time of the test would be submitted in the format generated through the use of the ERT and other performance evaluation results be submitted in PDF using the attachment module of the ERT.

For the PCWP semiannual report, the EPA proposed that owners or operators use a spreadsheet template to submit information to CEDRI. A draft version of the spreadsheet template for this report was included in the docket for the proposed rulemaking and the EPA specifically requested comment on its content, layout, and overall design.[6] The EPA also proposed to require future initial notifications developed according to 40 CFR 63.2280(b) and notifications of compliance status developed according to 40 CFR 63.2280(d) to be uploaded in CEDRI in a user-specified (*e.g.,* PDF) format. In addition, the EPA proposed two broad circumstances in which electronic reporting extensions may be granted. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible. The EPA proposed these potential extensions to protect owners or operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons

[5] *https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert.*

[6] See *40 CFR part 63, subpart DDDD—Plywood and Composite Wood Products Semiannual Compliance Reporting Spreadsheet Template,* Docket Item No. EPA–HQ–OAR–2016–0243–0176.

outside of their control. The situation where an extension may be warranted due to outages of the EPA's CDX or CEDRI which precludes an owner or operator from accessing the system and submitting required reports is addressed in 40 CFR 63.2281(k). The situation where an extension may be warranted due to a *force majeure* event, which is defined as an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents an owner or operator from complying with the requirement to submit a report electronically as required by this rule is addressed in 40 CFR 63.2281(l). Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

The EPA received several comments regarding the proposed electronic reporting requirements, including favorable comments and comments suggesting revisions. The electronic reporting requirements are included in the final rule as proposed with clarification of specific questions raised by commenters. Specific comments pertaining to the draft spreadsheet template are detailed in the RTC document along with the EPA's responses explaining how these comments were used to improve the template. A revised version of the semiannual electronic reporting spreadsheet template is available in the docket for the final rule.

One commenter requested that the requirement to use a CEDRI form should not begin until after the form has been available in CEDRI for at least 1 year. The commenter also recommended that the transition to using the new reporting form apply to an entire reporting period, not come into effect in the middle of a reporting period and result in two different reports being prepared. In response to this comment, we revised the final rule to specify use of the semiannual reporting template for the first full reporting period after it has been available on the CEDRI website for 1 year. Refer to section IV.J of this preamble for more discussion of the compliance timeline. The EPA proposed a conforming amendment in Table 9 to 40 CFR part 63, subpart DDDD, to require submittal of CMS performance evaluations according to the electronic reporting provisions for performance evaluations proposed in 40 CFR 63.2281(j). One commenter requested that the EPA clarify that CMS performance evaluations should be submitted only for continuous emission monitoring systems (CEMS) and not for continuous parameter monitoring systems. In response to these requests for clarification, we revised Table 9 to subpart DDDD to refer to state the CMS performance evaluation to be reported is the performance evaluation required for CEMS under 40 CFR 63.2269(d)(2). As discussed in section IV.G of this preamble, for the final rule, we also revised Table 10 of subpart DDDD to clarify that the CMS performance evaluation provisions in 40 CFR 63.8(e) and the RATA provisions in 40 CFR 63.8(f)(6) only apply for CEMS under subpart DDDD.

E. Repeat Emissions Testing

As part of an ongoing effort to improve compliance with federal air emission regulations, the EPA reviewed the emissions testing requirements of 40 CFR part 63, subpart DDDD, and proposed to require facilities complying with the standards in Table 1B of 40 CFR part 63, subpart DDDD, using an add-on control system other than a biofilter to conduct repeat emissions performance testing every 5 years. Currently, facilities operating add-on controls are required to conduct an initial performance test by the date specified in 40 CFR 63.2261(a). In addition to the initial performance test, process units controlled by biofilters are already required by the PCWP NESHAP to conduct repeat performance testing every 2 years. Periodic performance tests for all types of control systems are already required by permitting authorities for many facilities. Further, the EPA believes that requiring repeat performance tests will help to ensure that control systems are properly maintained over time. As proposed in Table 7 to 40 CFR part 63, subpart DDDD (row 7), the first of the repeat performance tests would be required to be conducted within 3 years of the effective date of the revised standards or within 5 years (60 months) following the previous performance test, whichever is later, and thereafter within 60 months following the previous performance test. Section IV.J of this preamble provides more information on compliance dates.

The EPA specifically requested comments on the proposed requirements for repeat performance testing. One commenter agreed with the proposed requirements and stated they are well supported and legally required as part of meeting the EPA's statutory obligations. The EPA received other comments requesting clarification of the requirements surrounding repeat testing. One commenter requested clarification with regards to whether the repeat testing is to include press capture efficiency testing and requested due to cost, that repeat press capture efficiency testing only be required if an alteration has been made to the enclosure that would significantly affect its efficacy. In response to this comment, a footnote was added to Table 7 to 40 CFR part 63, subpart DDDD, clarifying that capture efficiency demonstration is not required with repeat performance tests if the capture device is maintained and operated consistent with its design as well as its operation during the previous capture efficiency demonstration conducted according to Table 4 to subpart DDDD, row 9 as specified in 40 CFR 63.2267.[7] Aside from this clarification, the proposed requirements for repeat emissions testing every 5 years for add-on controls other than biofilters are included in the final rule as proposed.

Two commenters requested more flexibility for catalytic oxidizer catalyst checks required by the rule given the added repeat testing requirements. The commenters requested the frequency of catalyst checks be revised to ''annual'' or no more than every 15 months and requested the requirement for catalyst checks be eliminated during years when emissions tests are conducted. In response to these comments, the EPA revised Tables 2 and 7 to 40 CFR part 63, subpart DDDD, to refer to ''annual'' catalyst checks and included a footnote stating that facilities may forego the annual catalyst activity check during the calendar year when a performance test conducted according to Table 4 to subpart DDDD. The final rule requires that, in each calendar year, either a performance test or a catalyst activity check must be conducted.

One commenter requested clarification that the Notification of Compliance Status (NCS) is only required with the initial performance test, not with each repeat performance test. As explained further in the RTC document, a NCS is required with initial and repeat performance tests under 40 CFR 63.9. In response to this comment, the EPA deleted the word ''initial'' from 40 CFR 63.2280(d) and added a phrase mentioning the ''repeat performance test as specified in Table 7 to this subpart'' so it is clearer that a NCS is required when performing repeat testing according to the methods in Table 4 to 40 CFR part 63, subpart DDDD. The EPA also deleted the word ''initial'' and added a reference to Table 7 to subpart DDDD (which includes repeat testing in

[7] The footnote added to Table 7 to 40 CFR part 63, subpart DDDD, clarifying when capture efficiency testing is required was included for biofilters and other control devices undergoing repeat emissions testing.

rows 3 and 7) to 40 CFR 63.2280(d)(2) and clarified that the NCS only needs to have ''a summary of'' the performance test results submitted according to the electronic performance test reporting provisions in 40 CFR 63.2281(i).

F. Biofilter Bed Temperature

Facilities using a biofilter to comply with the PCWP NESHAP must monitor biofilter bed temperature and maintain the 24-hour block biofilter bed temperature within the range established during performance testing showing compliance with the emission limits. As originally promulgated, the upper and lower limits of the biofilter bed temperature were required to be established as the highest and lowest 15-minute average bed temperatures, respectively, during the three test runs. Facilities may conduct multiple performance tests to expand the biofilter bed operating temperature range. See 40 CFR 63.2262(m).

The EPA learned that multiple facilities are having difficulty complying with the PCWP biofilter bed temperature monitoring requirements established according to the original rule. Biofilter bed temperature is affected by ambient temperature which cannot always be accurately predicted in advance of scheduling performance tests. In consideration of this issue, as discussed in the preamble for the proposed amendments (at 84 FR 47097), the EPA proposed to revise 40 CFR 63.2262(m)(1) to add a 5-percent variability margin to the biofilter bed temperature upper and lower limits established during emissions testing.

Commenters on the proposal stated that the proposed 5-percent variability margin is insufficient, particularly on the lower end of the biofilter bed temperature range and recommended instead that the EPA provide a wider margin allowance or extend the operating limit averaging period beyond the current 24-hour period. The commenters stated that, unlike other common air pollution control devices with operating parameters that can be controlled within a small percentage of set point and are not subject to ambient atmospheric conditions, biofilters are influenced by diurnal, day-to-day, and seasonal ambient temperature variations because they are typically located outside due to their size. They further stated that in practical terms, in order to set the widest bed temperature range, a facility must test on the coldest and the hottest day of the year, yet predicting those days is not possible and is further complicated by the fact that stack test teams and permitting agencies must be given months of advance notice when scheduling a test.

To address the commenters' concern that a 5-percent variability margin is insufficient, the EPA increased the variability margin to 10 percent for the final rule with the stipulation that the variability margin not exceed 8 degrees Fahrenheit (°F) on the upper end of the biofilter bed range. As noted in the memorandum, *Review of Select Biofilter/Bioscrubber Data Submitted in Response to the Plywood and Composite Wood Products Information Collection Request,* Docket Item No. EPA–HQ–OAR–2016–0243–0188, the biofilter bed temperature across all of the biofilters in the PCWP industry spans from 40 °F to 150 °F. On the low end of this range, 5 percent is 2 °F while 10 percent is 4 °F. On the high end of the range, 5 percent is 8 °F while 10 percent is 15 °F. The upper-end value of 15 °F added to 150 °F would allow the facility to operate at 165 °F, which the EPA considers excessive in the absence of data showing this temperature is not detrimental to the microbial population. Therefore, for the final rule, the EPA capped the variability margin for the high end of the biofilter bed temperature range at 8 °F (which coincides with the margin proposed). Thus, for the high-end biofilter bed temperature, facilities may add up to 10 percent, not to exceed 8 °F.

The EPA anticipates that facilities currently having difficulty maintaining the biofilter bed temperature limits may wish to adjust their temperature limits. As originally promulgated, 40 CFR 63.2262(m)(1) states that facilities may base their biofilter bed temperature range on values recorded during previous performance tests provided that the data used to establish the temperature ranges have been obtained using the required test methods; and that facilities using data from previous performance tests must certify that the biofilter and associated process unit(s) have not been modified since the test. This provision (if met) clarifies that facilities can adjust their previously established biofilter temperature range to include the 5-percent variability margin, if desired.

G. Thermocouple Calibration

At 40 CFR 63.2269(b)(4), the PCWP NESHAP currently requires conducting an electronic calibration of the temperature monitoring device at least semiannually according to the procedures in the manufacturer's owner's manual. Stakeholders with facilities subject to the standard explained to the EPA that they are unaware of a thermocouple manufacturer that provides procedures for conducting electronic calibration of thermocouples. According to stakeholders, facilities have been replacing thermocouples because they cannot electronically calibrate them. The stakeholders requested the EPA consider an alternative approach to the current requirement in 40 CFR 63.2269(b)(4). To address this issue, the EPA proposed revisions to 40 CFR 63.2269(b)(4) to allow multiple alternative approaches to thermocouple validation.

The EPA received comments supporting the proposed revisions to 40 CFR 63.2269(b)(4) and we are promulgating these revisions as proposed with minor clarifications. In response to a comment that the word ''calibration'' be removed from 40 CFR 63.2269(b)(5), the EPA is amending this paragraph to replace ''calibration and validation checks'' with ''validation checks'' and to specify that validation checks be conducted using the procedures in 40 CFR 63.2269(b)(4). One commenter requested the EPA to clarify that temperature sensor validations are not performance evaluations requiring formal notification and reporting under 40 CFR 63.8. For the final rule, the EPA has revised Table 10 of 40 CFR part 63, subpart DDDD, to clarify that the CMS performance evaluation provisions in 40 CFR 63.8(e) and the RATA provisions in 40 CFR 63.8(f)(6) only apply for CEMS under subpart DDDD.

H. Non-HAP Coating Definition

The EPA proposed to replace the references to Occupational Safety and Health Administration (OSHA)-defined carcinogens and 29 CFR 1910.1200(d)(4) in the PCWP ''non-HAP coating'' definition with a reference to a new appendix B to 40 CFR part 63, subpart DDDD. The proposed appendix listed the specific carcinogenic HAP that must be below 0.1 percent by mass for a PCWP coating to be considered a non-HAP coating.

One commenter stated that the Hazard Communication Standard (HCS) (29 CFR 1910.1200(g)), revised in 2012, requires that a chemical manufacturer, distributor, or importer provide a Safety Data Sheet (SDS) (formerly MSDSs or Material Safety Data Sheets) for each hazardous chemical to downstream users, and that PCWP facilities rely on SDSs to identify whether coatings contain carcinogens. The commenter stated that if the EPA finalizes a separate list of HAP in appendix B to 40 CFR part 63, subpart DDDD, there will be no certainty as to whether non-HAP coatings are being used because of the

discrepancy in HAP listed on SDSs (per the HCS) and in appendix B to subpart DDDD. The commenter suggested the EPA should remove appendix B to subpart DDDD and instead reference the OSHA SDS requirements for classification of carcinogenicity at 29 CFR 1910.1200, appendix A, section A.6.4, which match the requirements in the now obsolete OSHA regulatory reference proposed for deletion from the PCWP non-HAP coating definition.

The EPA agrees that referencing appendix A to 29 CFR 1910.1200 in the PCWP rule's non-HAP coating definition is a more streamlined approach for the PCWP NESHAP than use of the proposed appendix B to 40 CFR part 63, subpart DDDD. The OSHA language the PCWP proposal sought to replace is in appendix A to 29 CFR 1910.1200, section A.6.4. For the final PCWP amendments, the EPA is defining non-HAP coating to mean a coating with HAP contents below 0.1 percent by mass for OSHA-defined carcinogens as specified in section A.6.4 of appendix A to 29 CFR 1910.1200 and below 1.0 percent by mass for other HAP compounds. As a result of the new reference, the proposed appendix B is not being finalized.

I. Technical and Editorial Changes

The EPA is finalizing the following technical and editorial changes to the final rule as proposed:

- The clarifying reference to ''SSM plans'' in 40 CFR 63.2252 was removed because SSM plans would no longer be applicable after the date specified in 40 CFR 63.2250(c);
- the redundant reference in 40 CFR 63.2281(c)(6) for submittal of performance test results with the compliance report was eliminated because performance test results would be required to be electronically reported;
- the EPA revised 40 CFR 63.2281(d)(2) and added language to 40 CFR 63.2281(e) introductory text and (e)(12) and (13) to make these paragraphs more consistent to facilitate electronic reporting;
- a provision stating that the EPA retains authority to approve alternatives to electronic reporting was added to 40 CFR 63.2291(c)(5);
- cross-references to the 40 CFR part 60 appendices containing test methods were updated in Table 4 of the rule;
- cross-references were updated throughout the rule, as needed, to match the proposed changes;
- cross-references to 40 CFR 63.14 were updated to remove outdated paragraph references;
- the equation number cross-referenced in the definition of ''MSF'' was corrected; and
- the cross-reference in 40 CFR 63.2290 was updated to include all sections of the General Provisions.

J. Compliance Dates

The EPA proposed that existing affected sources and other affected sources that commenced construction or reconstruction on or before September 6, 2019, must comply with all of the amendments 6 months (180 days) after the effective date of the final rule.[8] The EPA also proposed the addition of electronic reporting requirements that will require use of a semiannual reporting template once the template has been available on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for 6 months. New requirements to conduct repeat performance testing every 5 years for facilities using an add-on control system other than a biofilter (see section IV.E of this preamble) were also proposed. The first of the repeat performance tests would be required to be conducted within 3 years after the effective date of the revised standards, or within 5 years (60 months) following the previous performance test, whichever is later, and thereafter within 60 months following the previous performance test. The EPA specifically requested comment on whether the proposed compliance times provide enough time for owners or operators to comply with the proposed amendments, and if the proposed time window is not adequate, requested that commenters provide an explanation of specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements.

One commenter stated that the 180 days proposed by the EPA for existing facilities to comply with all of the proposed amendments is not enough time to complete all of the activities that must be done in order to effect a smooth transition to the new requirements, including: Developing a site-specific implementation plan; implementing new startup and shutdown procedures; reprogramming of electronic systems and automated alarms to account for the removal of SSM provisions and the addition of new startup and shutdown related work practices; reworking recordkeeping and reporting systems to match the layout of the new CEDRI form (*e.g.,* breaking out reporting by individual equipment instead of by process group); developing and communicating guidance to ensure consistent implementation across a company's facilities; preparing permit applications and acquiring revised air permits to reflect the elimination of SSM provisions and addition of new requirements; developing procedures for estimating excess emissions due to deviations; and developing and providing training for facility staff on the revised requirements. The commenter further stated that applying for and receiving a permit revision to reflect the revised requirements alone will likely take more than 180 days and expressed concern that if additional time is not provided and if current permit language conflicts with the final RTR rule, facilities will have to determine how to comply with both the old requirements and the new requirements. The commenter also noted that working with information technology support staff to re-program a facility's electronic systems to align with the new requirements is an effort that takes more than 180 days to plan and implement.

After considering the public comments, the EPA recognizes that 180 days is not practicable for completion of the steps needed to implement the PCWP rule changes given the complexity of operations in the PCWP source category. The PCWP industry involves manufacturing of several different products, using a variety of process unit and control system combinations that differ from facility to facility. As documented in the technology review, the PCWP processes and controls at many mills are highly interconnected (*e.g.,* where multiple different types of process units are routed to the same control device; process units of one type are routed through process units of a different type to emissions control; or where the furnace that provides process heat is also part of the air pollution control system for some processes). The interconnectivity of processes and fire-prevention systems needed for processing wood requires a high degree of automation and interconnection in the programmable logic controllers and data acquisition systems (DAS) tailored to each PCWP plant site. Some companies have one PCWP facility while others have more than 10 facilities manufacturing different PCWP products using a variety of equipment

[8] The final action is not a ''major rule'' as defined by 5 U.S.C. 804(2), therefore, the effective date of the final rule is the promulgation date as specified in CAA section 112(d)(10).

configurations. The EPA understands that companies with numerous PCWP facilities need time for corporate coordination of IT programming resources across multiple uniquely configured plant sites, while companies with fewer facilities have more-limited environmental staff that are sometimes shared across two or three PCWP facilities to oversee reprogramming. The EPA has concluded that 1 year following the effective date of the final amendments is the most expeditious compliance period practicable for existing PCWP affected sources to make the DAS adjustments needed to demonstrate compliance with the revised requirements during startup and shutdown periods and to transition to electronic reporting. All existing affected facilities will have to continue to meet the current requirements of the NESHAP until the applicable compliance date of the amended rule. Affected sources that commence construction or reconstruction after September 6, 2019 (the publication date of the proposed rulemaking) must comply with all requirements of the subpart, including the final amendments, no later than the effective date of the final rule or upon initial startup, whichever is later.

Regarding the compliance timeline for semiannual reporting, the EPA received comments requesting that the new requirements come into effect at the beginning of a semiannual reporting period, and not in the middle of a reporting period to avoid two different reports being prepared. The EPA recognizes that there can be a transitional compliance period because of the way the effective date of the final PCWP rule is set as the date of publication of the final **Federal Register** document. During this transitional period for existing sources, the previously promulgated rule requirements must be met until the compliance date (*e.g.,* compliance with the SSM plan), and then the newly promulgated requirements must be met thereafter. The EPA anticipates that this transitional semiannual reporting period will occur before the PCWP semiannual electronic reporting spreadsheet is required to be used. To ensure this, we have revised the final rule to specify use of the semiannual reporting template for the first full reporting period after it has been available on the CEDRI website for 1 year.

Regarding the compliance timeline for repeat emissions testing, the compliance dates are included in the final rule as proposed. No comments were received regarding the compliance dates for repeat emissions testing. As proposed, the first of the repeat performance tests must be conducted within 3 years after August 13, 2020, or within 60 months following the previous performance test, whichever is later.

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

A. What are the affected facilities?

As noted in the preamble to the proposed amendments, the EPA identified 230 facilities that are operating and subject to the PCWP NESHAP. This includes 109 facilities manufacturing one or more PCWP products (*e.g.,* plywood, veneer, particleboard, OSB, hardboard, fiberboard, MDF, engineered wood products) and 121 facilities that produce kiln-dried lumber. Sixteen facilities produce PCWP products and kiln-dried lumber. Information on operational facilities is included in the *Technology Review for the Plywood and Composite Wood Products NESHAP,* available as Docket Item No. EPA–HQ–OAR–2016–0243–0189. In addition, the EPA is aware of 13 greenfield facilities (four PCWP and nine kiln-dried lumber mills) that recently commenced construction as major sources of HAP emissions. The EPA is projecting that two new OSB mills will be constructed as major sources within the next 5 years, and that existing facilities will add or replace process units during this same time frame. More details on our projections of new sources are available in *Projections of the Number of New and Reconstructed Sources for the Subpart DDDD Technology Review,* available as Docket Item No. EPA–HQ–OAR–2016–0243–0182.

B. What are the air quality impacts?

The nationwide baseline HAP emissions from the 230 facilities in the PCWP source category are estimated to be 7,600 tpy. Emissions of the six compounds defined as ''total HAP'' in the PCWP NESHAP (acetaldehyde, acrolein, formaldehyde, methanol, phenol, and propionaldehyde) make up 96 percent of the nationwide emissions. The amendments include removal of the SSM exemption and addition of repeat emissions testing for controls other than biofilters (which already require repeat tests). Although the EPA is unable to quantify the emission reduction associated with these changes, we expect that emissions will be reduced by requiring facilities to meet the applicable standard during periods of SSM and that the repeat emissions testing requirements will encourage operation of add-on controls to achieve optimum performance. The EPA is not finalizing other revisions to the emission limits that would impact emissions, so there are no quantifiable air quality impacts resulting from the final amendments.

C. What are the cost impacts?

No capital costs are estimated to be incurred to comply with the final amendments. The costs associated with the final amendments are related to recordkeeping and reporting labor costs and repeat performance testing. Because repeat performance testing is required every 5 years, costs are estimated and summarized over a 5-year period. The nationwide cost of the final amendments is estimated to include a one-time cost of $1.3 million for facilities to review the revised rule and make record systems adjustments and a cost of $3.5 million every 5 years for repeat emissions testing. These costs are in 2018 dollars.

Another metric for presenting the one-time costs is as a present value (PV), which is a technique that converts a stream of costs over time into a one-time estimate for the present year or other year. The EPA estimates that the PV of costs for these final amendments is $5.6 million at a discount rate of 7 percent and $6.9 million at a discount rate of 3 percent. In addition, the EPA presents these costs as an equivalent annualized value (EAV) in order to provide an estimate of annual costs consistent with the PV. The EAV for these final amendments is estimated to be $0.9 million at a discount rate of 7 percent and $1.0 million at a discount rate of 3 percent. The PV and EAV cost estimates are in 2016 dollars, in part, to conform to Executive Order 13771 requirements. These estimates have not changed since the proposal. For further information on the costs associated with the amendments, see the memorandum, *Cost, Environmental, and Energy Impacts of Regulatory Options for Subpart DDDD,* Docket Item No. EPA–HQ–OAR–2016–0243–0184, and the memorandum, *Economic Impact and Small Business Analysis for the Proposed Plywood and Composite Wood Products Risk and Technology Review (RTR) NESHAP,* Docket Item No. EPA–HQ–OAR–2016–0243–0185.

D. What are the economic impacts?

The EPA estimated that none of the ultimate parent owners affected by the proposed amendments would incur annualized costs of 1.0 percent or greater of their revenues, and that estimate has not changed since proposal. Thus, these economic impacts are low for affected companies and the

industries impacted by this action, and there will not be substantial impacts in the markets for affected products. For more information on the economic impact analysis conducted for the proposal, see the memorandum titled *Economic Impact and Small Business Analysis for the Proposed Plywood and Composite Wood Risk and Technology Review (RTR) NESHAP,* Docket Item No. EPA–HQ–OAR–2016–0243–0185.

E. What are the benefits?

The EPA is not finalizing changes to emissions limits, except to the extent necessary to make them applicable during SSM periods and to establish work practice requirements for certain startup and shutdown periods. The EPA estimates the final amendments (*i.e.,* changes to SSM, recordkeeping, reporting, and monitoring) are not economically significant. Because these amendments are not considered economically significant, as defined by Executive Order 12866, and because no emissions reductions were estimated, the EPA did not estimate any benefits from reducing emissions.

F. What analysis of environmental justice did we conduct?

Executive Order 12898 (59 FR 7629, February 16, 1994) 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.

To examine the potential for any environmental justice issues that might be associated with the source category, the EPA performed a demographic analysis, which is an assessment of risks to individual demographic groups of the populations living within 5 kilometers (km) and within 50 km of the facilities. In the analysis, we evaluated the distribution of HAP-related cancer and noncancer risks from each source category across different demographic groups within the populations living near facilities. The results of the PCWP source category demographic analysis indicate that emissions from the source category expose approximately 200,000 people to a cancer risk at or above 1-in-1 million and zero people to a chronic noncancer TOSHI greater than 1. The percentages of the at-risk population in four of the 11 demographic groups (African American, Native American, below poverty level, and over 25 without a high school diploma) are greater than their respective nationwide percentages.

The methodology and the results of the demographic analysis are presented in the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Plywood and Composite Wood Products Source Category,* Docket Item No. EPA–HQ–OAR–2016–0243–0181.

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

The EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Final Rule,* available in the docket for this action, Docket ID No. EPA–HQ–OAR–2016–0243.

VI. Statutory and Executive Order Reviews

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

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

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

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

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

C. Paperwork Reduction Act (PRA)

The information collection activities in this final rule have been submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 1984.09. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

The information is being collected to assure compliance with 40 CFR part 63, subpart DDDD. The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emissions standards. The information collection activities also include paperwork requirements associated with initial and repeat performance testing and parameter monitoring. The final amendments to the rule eliminate the paperwork requirements associated with the SSM plan and recordkeeping of SSM events and require electronic submittal of performance test results and semiannual compliance reports. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414).

Respondents/affected entities: Owners or operators of facilities subject to 40 CFR part 63, subpart DDDD, that produce plywood, composite wood products, or kiln-dried lumber.

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

Estimated number of respondents: 244 facilities (including existing and new facilities projected to begin reporting during the ICR period).

Frequency of response: The frequency varies depending on the type of response (*e.g.,* initial notification, semiannual compliance report).

Total estimated burden: 39,700 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $6,930,000 (per year), includes $2,365,000 annualized capital or operation and maintenance costs.

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

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if

the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. Of the 69 ultimate parent entities that are subject to the rule, 28 are small according to the Small Business Administration's small business size standards and standards regarding other entities (*e.g.,* federally recognized tribes). None of the affected 28 small entities have annualized costs of 1 percent or greater of sales. The EPA has, therefore, concluded that this action will not have a significant impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. While this action creates an enforceable duty on the private sector, the cost does not exceed $100 million or more.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. No tribal governments own facilities that are impacted by the proposed changes to the NESHAP. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are discussed in sections III and IV of this preamble and further documented in the risk report titled *Residual Risk Assessment for the Plywood and Composite Wood Products Source Category in Support of the 2019 Risk and Technology Review Final Rule,* which can be found in the docket for this action.

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

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

J. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. The EPA is finalizing the use of the standards currently listed in Table 4 of the rule (40 CFR part 63, subpart DDDD). The EPA is amending 40 CFR 63.14 to incorporate by reference EPA Method 0011 for measurement of formaldehyde. Method 0011 is applicable to the determination of destruction and removal efficiency of analytes including formaldehyde and other compounds. Pollutants withdrawn isokinetically from the emission source and are collected in aqueous acidic 2,4-dinitrophenylhydrazine. Formaldehyde present in the emission stream reacts to form a derivative that extracted, solvent-exchanged, concentrated, and then analyzed by high performance liquid chromatography. The SW–846 Method 0011 (Revision 0, December 1996) is available in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication No. SW–846. This method was included in the PCWP rule when it was promulgated in 2004 and is reasonably available from the EPA at *https://www.epa.gov/hw-sw846/sw-846-compendium.* Under 40 CFR 63.7(f) and 40 CFR 63.8(f) of subpart A of the General Provisions, a source may apply to the EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, performance specifications, or procedures in the final rule or any amendments.

The following standards, referenced in the regulatory text, are already approved for incorporation by reference at their respective locations: NCASI Method CI/WP–98.01; NCASI Method IM/CAN/WP–99.02; NCASI Method ISS/FP–A105.01; ASTM D6348–03.

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

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

The documentation for this decision is contained in section IV.A.6 of the preamble to the proposed amendments (84 FR 47074, September 6, 2019) and the technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Plywood and Composite Wood Products Source Category,* Docket Item No. EPA–HQ–OAR–2016–0243–0181.

L. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 63

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

Andrew Wheeler,
Administrator.

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

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

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

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

Subpart A—General Provisions

■ 2. Section 63.14 is amended by redesignating paragraphs (n)(8) through (28) as (n)(9) through (29) and adding new paragraph (n)(8) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(n) * * *

(8) SW–846–0011, Sampling for Selected Aldehyde and Ketone Emissions from Stationary Sources, Revision 0, December 1996, in EPA Publication No. SW–846, Test Methods

for Evaluating Solid Waste, Physical/Chemical Methods, Third Edition, IBR approved for table 4 to subpart DDDD.

* * * * *

Subpart DDDD—National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products

■ 3. Section 63.2233 is amended by revising paragraphs (a)(1) and (2) and (b) to read as follows:

§ 63.2233 When do I have to comply with this subpart?

(a) * * *

(1) If the initial startup of your affected source is before September 28, 2004, then you must comply with the compliance options, operating requirements, and work practice requirements for new and reconstructed sources in this subpart no later than September 28, 2004, except as otherwise specified in §§ 63.2250, 63.2280(b) and (d), 63.2281(b)(6), and 63.2282(a)(2) and Tables 3, 6, 7, 8, 9, and 10 to this subpart.

(2) If the initial startup of your affected source is after September 28, 2004, then you must comply with the compliance options, operating requirements, and work practice requirements for new and reconstructed sources in this subpart upon initial startup of your affected source, except as otherwise specified in §§ 63.2250, 63.2280(b) and (d), 63.2281(b)(6), and 63.2282(a)(2) and Tables 3, 6, 7, 8, 9, and 10 to this subpart.

(b) If you have an existing affected source, you must comply with the compliance options, operating requirements, and work practice requirements for existing sources no later than October 1, 2007, except as otherwise specified in §§ 63.2240(c)(2)(vi)(A), 63.2250, 63.2280(b) and (d), 63.2281(b)(6) and (c)(4), and 63.2282(a)(2) and Tables 3, 6, 7, 8, 9, and 10 to this subpart.

* * * * *

■ 4. Section 63.2240 is amended by revising paragraph (c)(2)(vi)(A) to read as follows:

§ 63.2240 What are the compliance options and operating requirements and how must I meet them?

* * * * *

(c) * * *

(2) * * *

(vi) * * *

(A) Before August 13, 2021, emissions during periods of startup, shutdown, and malfunction as described in the startup, shutdown, and malfunction plan (SSMP). On and after August 13, 2021, emissions during safety-related shutdowns, pressurized refiner startups and shutdowns, or startup and shutdown of direct-fired softwood veneer dryer gas-fired burners.

* * * * *

■ 5. Section 63.2250 is amended by:

■ a. Adding two sentences to the end of paragraph (a);

■ b. Revising paragraphs (b) and (c); and

■ c. Adding paragraphs (e) through (g).

The revisions and additions read as follows:

§ 63.2250 What are the general requirements?

(a) * * * For any affected source that commences construction or reconstruction after September 6, 2019, this paragraph (a) does not apply on and after August 13, 2020 or initial startup of the affected source, whichever is later. For all other affected sources, this paragraph (a) does not apply on and after August 13, 2021.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment according to the provisions in § 63.6(e)(1)(i). For any affected source that commences construction or reconstruction after September 6, 2019, this paragraph (b) does not apply on and after August 13, 2020 or initial startup of the affected source, whichever is later. For all other affected sources, this paragraph (b) does not apply on and after August 13, 2021.

(c) You must develop a written SSMP according to the provisions in § 63.6(e)(3). For any affected source that commences construction or reconstruction after September 6, 2019, this paragraph (c) does not apply on and after August 13, 2020 or initial startup of the affected source, whichever is later. For all other affected sources, this paragraph (c) does not apply on and after August 13, 2021.

* * * * *

(e) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 10 to this subpart.

(f) Upon August 13, 2020 or initial startup of the affected source, whichever is later, for affected sources that commenced construction or reconstruction after September 6, 2019, and on and after August 13, 2021 for all other affected sources, you must be in compliance with the compliance options, operating requirements, and the work practice requirements in this subpart when the process unit(s) subject to the compliance options, operating requirements, and work practice requirements are operating, except as specified in paragraphs (f)(1) through (6) of this section.

(1) Prior to process unit initial startup.

(2) During safety-related shutdowns conducted according to the work practice requirement in Table 3 to this subpart.

(3) During pressurized refiner startup and shutdown according to the work practice requirement in Table 3 to this subpart.

(4) During startup and shutdown of direct-fired softwood veneer dryer gas-fired burners according to the work practice requirement in Table 3 to this subpart.

(5) You must minimize the length of time when compliance options and operating requirements in this subpart are not met due to the conditions in paragraphs (f)(2) and (4) of this section.

(6) The applicable standard during each of the operating conditions specified in paragraphs (f)(2) through (4) of this section are the work practice requirements in Table 3 to this subpart for safety-related shutdowns (row 6), pressurized refiner startup and shutdown (row 7), and direct-fired softwood veneer dryers undergoing startup or shutdown of gas-fired burners (row 8). The otherwise applicable compliance options, operating requirements, and work practice requirements (in rows 1 through 5 of Table 3 to this subpart) do not apply during the operating conditions specified in paragraphs (f)(2) through (4) of this section.

(g) For affected sources that commenced construction or reconstruction after September 6, 2019, and for all other affected sources on and after August 13, 2021, you must always operate and maintain your affected source, including air pollution control and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart. The general duty to minimize emissions does not require you to make any further efforts to reduce emissions if levels required by the applicable standard have been achieved. Determination of whether a source is operating in compliance with operation and maintenance requirements will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records, and inspection of the source.

■ 6. Section 63.2252 is revised to read as follows:

§ 63.2252 What are the requirements for process units that have no control or work practice requirements?

For process units not subject to the compliance options or work practice requirements specified in § 63.2240 (including, but not limited to, lumber kilns), you are not required to comply with the compliance options, work practice requirements, performance testing, monitoring, and recordkeeping or reporting requirements of this subpart, or any other requirements in subpart A of this part, except for the initial notification requirements in § 63.9(b).

■ 7. Section 63.2262 is amended by revising paragraphs (a), (b), (m)(1), and (n)(1) to read as follows:

§ 63.2262 How do I conduct performance tests and establish operating requirements?

(a) *Testing procedures.* You must conduct each performance test according to the requirements in paragraphs (b) through (o) of this section and according to the methods specified in Table 4 to this subpart.

(b) *Periods when performance tests must be conducted.* You must conduct each performance test based on representative performance (*i.e.,* performance based on representative operating conditions as defined in § 63.2292) of the affected source for the period being tested. Representative conditions exclude periods of startup and shutdown. You may not conduct performance tests during periods of malfunction. You must describe representative operating conditions in your performance test report for the process and control systems and explain why they are representative. You must record the process information that is necessary to document operating conditions during the test and include in such record an explanation to support that such conditions are representative. Upon request, you shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

* * * * *

(m) * * *

(1) During the performance test, you must continuously monitor the biofilter bed temperature during each of the required 1-hour test runs. To monitor biofilter bed temperature, you may use multiple thermocouples in representative locations throughout the biofilter bed and calculate the average biofilter bed temperature across these thermocouples prior to reducing the temperature data to 15-minute averages for purposes of establishing biofilter bed temperature limits. The biofilter bed temperature range must be established as the temperature values 10 percent below the minimum and 10 percent (not to exceed 8° F) above the maximum 15-minute biofilter bed temperatures monitored during the three test runs. You may base your biofilter bed temperature range on values recorded during previous performance tests provided that the data used to establish the temperature ranges have been obtained using the test methods required in this subpart. If you use data from previous performance tests, you must certify that the biofilter and associated process unit(s) have not been modified subsequent to the date of the performance tests. Replacement of the biofilter media with the same type of material is not considered a modification of the biofilter for purposes of this section.

* * * * *

(n) * * *

(1) During the performance test, you must identify and document the process unit controlling parameter(s) that affect total HAP emissions during the three-run performance test. The controlling parameters you identify must coincide with the representative operating conditions you describe according to paragraph (b) of this section. For each parameter, you must specify appropriate monitoring methods, monitoring frequencies, and for continuously monitored parameters, averaging times not to exceed 24 hours. The operating limit for each controlling parameter must then be established as the minimum, maximum, range, or average (as appropriate depending on the parameter) recorded during the performance test. Multiple three-run performance tests may be conducted to establish a range of parameter values under different operating conditions.

* * * * *

■ 8. Section 63.2269 is amended by revising paragraphs (b)(4) and (5) to read as follows:

§ 63.2269 What are my monitoring installation, operation, and maintenance requirements?

* * * * *

(b) * * *

(4) Validate the temperature sensor's reading at least semiannually using the requirements of paragraph (b)(4)(i), (ii), (iii), (iv), or (v) of this section:

(i) Compare measured readings to a National Institute of Standards and Technology (NIST) traceable temperature measurement device or simulate a typical operating temperature using a NIST traceable temperature simulation device. When the temperature measurement device method is used, the sensor of the NIST traceable calibrated device must be placed as close as practicable to the process sensor, and both devices must be subjected to the same environmental conditions. The accuracy of the temperature measured must be 2.5 percent of the temperature measured by the NIST traceable device or 5 °F, whichever is greater.

(ii) Follow applicable procedures in the thermocouple manufacturer owner's manual.

(iii) Request thermocouple manufacturer to certify or re-certify electromotive force (electrical properties) of the thermocouple.

(iv) Replace thermocouple with a new certified thermocouple in lieu of validation.

(v) Permanently install a redundant temperature sensor as close as practicable to the process temperature sensor. The sensors must yield a reading within 30 °F of each other for thermal oxidizers and catalytic oxidizers; within 5 °F of each other for biofilters; and within 20 °F of each other for dry rotary dryers.

(5) Conduct validation checks using the procedures in paragraph (b)(4) of this section any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

* * * * *

■ 9. Section 63.2270 is amended by revising paragraph (c) to read as follows:

§ 63.2270 How do I monitor and collect data to demonstrate continuous compliance?

* * * * *

(c) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities or data recorded during periods of safety-related shutdown, pressurized refiner startup or shutdown, startup and shutdown of direct-fired softwood veneer dryer gas-fired burners, or control device downtime covered in any approved routine control device maintenance exemption in data averages and calculations used to report emission or operating levels, nor may such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control system.

* * * * *

■ 10. Section 63.2271 is amended by:

■ a. Revising paragraph (b) introductory text;

■ b. Removing and reserving paragraph (b)(2); and

■ c. Adding paragraph (b)(4).

The revisions and additions read as follows:

§ 63.2271 How do I demonstrate continuous compliance with the compliance options, operating requirements, and work practice requirements?

* * * * *

(b) You must report each instance in which you did not meet each compliance option, operating requirement, and work practice requirement in Tables 7 and 8 to this subpart that applies to you. This includes periods of startup, shutdown, and malfunction and periods of control device maintenance specified in paragraphs (b)(1) through (4) of this section. These instances are deviations from the compliance options, operating requirements, and work practice requirements in this subpart. These deviations must be reported according to the requirements in § 63.2281.

* * * * *

(4) Instances of safety-related shutdown, pressurized refiner startup and shutdown, and startup and shutdown of direct-fired softwood veneer dryer gas-fired burners subject to the work practice requirements in Table 3 to this subpart (rows 6 through 8) must be reported as required in § 63.2281(c)(4). Instances when the work practice requirements in Table 3 to this subpart (rows 6 through 8) are used are not considered to be deviations from (or violations of) the otherwise applicable compliance options, operating requirements and work practice requirements (in rows 1 through 5 of Table 3 to this subpart) as long as you do not exceed the minimum amount of time necessary for these events.

■ 11. Section 63.2280 is amended by revising paragraphs (b), (d) introductory text, and (d)(2) to read as follows:

§ 63.2280 What notifications must I submit and when?

* * * * *

(b) You must submit an Initial Notification no later than 120 calendar days after September 28, 2004, or after initial startup, whichever is later, as specified in § 63.9(b)(2). Initial Notifications required to be submitted after August 13, 2020 for affected sources that commence construction or reconstruction after September 6, 2019, and on and after August 13, 2021 for all other affected sources submitting initial notifications required in § 63.9(b) must be submitted following the procedure specified in § 63.2281(h), (k), and (l).

* * * * *

(d) If you are required to conduct a performance test, design evaluation, or other compliance demonstration as specified in Tables 4, 5, and 6 to this subpart, or a repeat performance test as specified in Table 7 to this subpart, you must submit a Notification of Compliance Status as specified in § 63.9(h)(2)(ii). After August 13, 2020 for affected sources that commence construction or reconstruction after September 6, 2019, and on and after August 13, 2021 for all other affected sources, submit all subsequent Notifications of Compliance Status following the procedure specified in § 63.2281(h), (k), and (l).

* * * * *

(2) For each compliance demonstration required in Tables 5, 6, and 7 to this subpart that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including a summary of the performance test results, before the close of business on the 60th calendar day following the completion of the performance test.

* * * * *

■ 12. Section 63.2281 is amended by:

■ a. Revising paragraph (b) introductory text;

■ b. Adding paragraph (b)(6);

■ c. Revising paragraph (c)(4);

■ d. Removing and reserving paragraph (c)(6);

■ e. Revising paragraph (d)(2);

■ f. Revising the first sentence of paragraph (e) introductory text;

■ g. Removing and reserving paragraph (e)(1);

■ h. Revising paragraph (e)(2);

■ i. Adding paragraphs (e)(12) and (13); and

■ j. Adding paragraphs (h) through (l).

The revisions and additions read as follows:

§ 63.2281 What reports must I submit and when?

* * * * *

(b) Unless the EPA Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 9 to this subpart and as specified in paragraphs (b)(1) through (6) of this section.

* * * * *

(6) After August 13, 2020 for affected sources that commenced construction or reconstruction after September 6, 2019, and on and after August 13, 2021 for all other affected sources, submit all subsequent reports following the procedure specified in paragraphs (h), (k) and (l) of this section.

(c) * * *

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information specified in § 63.10(d)(5)(i) before August 13, 2021 for affected sources that commenced construction or reconstruction before September 6, 2019. After August 13, 2020 for affected sources that commenced construction or reconstruction after September 6, 2019, and on and after August 13, 2021 for all other affected sources, the compliance report must include the number of instances and total amount of time during the reporting period in which each of the startup/shutdown work practice requirements in Table 3 to this subpart (rows 6 through 8) is used in place of the otherwise applicable compliance options, operating requirements, and work practice requirements (in Table 3 to this subpart rows 1 through 5). If a startup/shutdown work practice in Table 3 to this subpart (rows 6 through 8) is used for more than a total of 100 hours during the semiannual reporting period, you must report the date, time and duration of each instance when that startup/shutdown work practice was used.

* * * * *

(d) * * *

(2) Information on the date, time, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from a compliance option, operating requirement, or work practice requirement occurring at an affected source where you are using a CMS to comply with the compliance options, operating requirements, or work practice requirements in this subpart, you must include the information in paragraphs (c)(1) through (6) and (e)(1) through (13) of this section. * * *

* * * * *

(2) The date, time, and duration that each CMS was inoperative, except for zero (low-level) and high-level checks.

* * * * *

(12) For any failure to meet a compliance option in § 63.2240, including the compliance options in Table 1A or 1B to this subpart or the emissions averaging compliance option, provide an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of

the method used to estimate the emissions.

(13) The total operating time of each affected source during the reporting period.

* * * * *

(h) If you are required to submit reports following the procedure specified in this paragraph (h), you must submit reports to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*). The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as confidential business information (CBI). Anything submitted using CEDRI cannot later be claimed to be CBI. For semiannual compliance reports required in this section and Table 9 (row 1) to this subpart, you must use the appropriate electronic report template on the CEDRI website (*https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri*) for this subpart once the reporting template has been available on the CEDRI website for 1 year. The date report templates become available will be listed on the CEDRI website. If the reporting form for the semiannual compliance report specific to this subpart is not available in CEDRI at the time that the report is due, you must submit the report to the Administrator at the appropriate addresses listed in § 63.13. You must begin submitting all subsequent reports via CEDRI in the first full reporting period after the report template for this subpart has been available in CEDRI for 1 year. Initial Notifications developed according to § 63.2280(b) and Notifications of Compliance Status developed according to § 63.2280(d) may be uploaded in a user-specified format such as portable document format (PDF). The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. Although we do not expect persons to assert a claim of CBI, if persons wish to assert a CBI claim, submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX. All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c) emissions data is not entitled to confidential treatment and requires EPA to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

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

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

(2) *Data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the test.* The results of the performance test must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *Confidential Business Information (CBI).* The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as CBI. Anything submitted using CEDRI cannot later be claimed to be CBI. Although we do not expect persons to assert a claim of CBI, if you claim some of the information submitted under this paragraph (i) is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in this paragraph (i). All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c) emissions data is not entitled to confidential treatment and requires EPA to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

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

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

(2) *Performance evaluations of CMS measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT website at the time of the evaluation.* The results of the performance evaluation must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT generated package or alternative file to the EPA via CEDRI.

(3) *Confidential Business Information (CBI).* The EPA will make all the information submitted through CEDRI available to the public without further notice to you. Do not use CEDRI to submit information you claim as CBI. Anything submitted using CEDRI cannot later be claimed to be CBI. Although we do not expect persons to assert a claim of CBI, if you claim some of the information submitted under this paragraph (j) is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the

file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in this paragraph (j). All CBI claims must be asserted at the time of submission. Furthermore, under CAA section 114(c) emissions data is not entitled to confidential treatment and requires EPA to make emissions data available to the public. Thus, emissions data will not be protected as CBI and will be made publicly available.

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

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

(2) The outage must have occurred within the period of time beginning 5 business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

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

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

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

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

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

(iv) The date by which you propose to report, or if you have already met the electronic submittal requirement in this subpart at the time of the notification, the date you submitted the report.

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

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

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

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

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

(3) You must provide to the Administrator:

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

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

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

(iv) The date by which you propose to report, or if you have already met the electronic submittal requirement in this subpart at the time of the notification, the date you submitted the report.

(4) The decision to accept the claim of *force majeure* and allow an extension to the reporting deadline is solely within the discretion of the Administrator.

(5) In any circumstance, the reporting must occur as soon as possible after the *force majeure* event occurs.

■ 13. Section 63.2282 is amended by revising paragraphs (a)(2) and (c)(2) and adding paragraph (f) to read as follows:

§ 63.2282 What records must I keep?

(a) * * *

(2) Before August 13, 2021, the records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction for affected sources that commenced construction or reconstruction before September 6, 2019. After August 13, 2021] for affected sources that commenced construction or reconstruction after September 6, 2019, and on and after August 13, 2021 for all other affected sources, the records related to startup and shutdown, failures to meet the standard, and actions taken to minimize emissions, specified in paragraphs (a)(2)(i) through (iv) of this section.

(i) Record the date, time, and duration of each startup and/or shutdown period, including the periods when the affected source was subject to the standard applicable to startup and shutdown.

(ii) In the event that an affected unit fails to meet an applicable standard, record the number of failures; for each failure, record the date, time, cause and duration of each failure.

(iii) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, and the following information:

(A) For any failure to meet a compliance option in § 63.2240, including the compliance options in Table 1A or 1B to this subpart or the emissions averaging compliance option, record an estimate of the quantity of each regulated pollutant emitted over any emission limit and a description of the method used to estimate the emissions.

(B) For each failure to meet an operating requirement in Table 2 to this subpart or work practice requirement in Table 3 to this subpart, maintain sufficient information to estimate the quantity of each regulated pollutant emitted over the emission limit. This information must be sufficient to provide a reliable emissions estimate if requested by the Administrator.

(iv) Record actions taken to minimize emissions in accordance with § 63.2250(g), and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

* * * * *

(c) * * *

(2) Previous (*i.e.,* superseded) versions of the performance evaluation plan, with the program of corrective action included in the plan required under § 63.8(d)(2).

* * * * *

(f) You must keep the written CMS quality control procedures required by § 63.8(d)(2) on record for the life of the

affected source or until the affected source is no longer subject to the provisions of this subpart, to be made available for inspection, upon request, by the Administrator. If the performance evaluation plan is revised, you must keep previous (*i.e.,* superseded) versions of the performance evaluation plan on record to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan. The program of corrective action should be included in the plan required under § 63.8(d)(2).

■ 14. Section 63.2283 is amended by adding paragraph (d) to read as follows:

§ 63.2283 In what form and how long must I keep my records?

* * * * *

(d) Any records required to be maintained by this part that are submitted electronically via the EPA's CEDRI may be maintained in electronic format. This ability to maintain electronic copies does not affect the requirement for facilities to make records, data, and reports available upon request to a delegated air agency or the EPA as part of an on-site compliance evaluation.

■ 15. Section 63.2290 is revised to read as follows:

§ 63.2290 What parts of the general provisions apply to me?

Table 10 to this subpart shows which parts of the general provisions in §§ 63.1 through 63.16 apply to you.

■ 16. Section 63.2291 is amended by revising paragraph (c) introductory text and adding paragraph (c)(5) to read as follows:

§ 63.2291 Who implements and enforces this subpart?

* * * * *

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (5) of this section.

* * * * *

(5) Approval of an alternative to any electronic reporting to the EPA required by this subpart.

■ 17. Section 63.2292 is amended by:

■ a. Revising the definitions of ''MSF,'' ''Non-HAP coating,'' and ''Representative operating conditions'';

■ b. Adding the definition of ''Safety-related shutdown'' in alphabetical order; and

■ c. Removing the definition of ''Startup, shutdown, and malfunction plan.''

The revisions and addition read as follows:

§ 63.2292 What definitions apply to this subpart?

* * * * *

MSF means thousand square feet (92.9 square meters). Square footage of panels is usually measured on a thickness basis, such as ⅜-inch, to define the total volume of panels. Equation 3 of § 63.2262(j) shows how to convert from one thickness basis to another.

* * * * *

Non-HAP coating means a coating with HAP contents below 0.1 percent by mass for Occupational Safety and Health Administration-defined carcinogens as specified in section A.6.4 of appendix A to 29 CFR 1910.1200, and below 1.0 percent by mass for other HAP compounds.

* * * * *

Representative operating conditions means operation of a process unit during performance testing under the conditions that the process unit will typically be operating in the future, including use of a representative range of materials (*e.g.,* wood material of a typical species mix and moisture content or typical resin formulation) and representative operating temperature range. Representative operating conditions exclude periods of startup and shutdown.

* * * * *

Safety-related shutdown means an unscheduled shutdown of a process unit subject to a compliance option in Table 1B to this subpart (or a process unit with HAP control under an emissions averaging plan developed according to § 63.2240(c)) during which time emissions from the process unit cannot be safely routed to the control system in place to meet the compliance options or operating requirements in this subpart without imminent danger to the process, control system, or system operator.

* * * * *

■ 18. Table 2 to subpart DDDD is revised to read as follows:

TABLE 2 TO SUBPART DDDD OF PART 63—OPERATING REQUIREMENTS

If you operate a(n) . . .	You must . . .	Or you must . . .
(1) Thermal oxidizer	Maintain the 3-hour block average firebox temperature above the minimum temperature established during the performance test.	Maintain the 3-hour block average THC concentration [1] in the thermal oxidizer exhaust below the maximum concentration established during the performance test.
(2) Catalytic oxidizer	Maintain the 3-hour block average catalytic oxidizer temperature above the minimum temperature established during the performance test; AND check the activity level of a representative sample of the catalyst annually except as specified in footnote ''2'' to this table.	Maintain the 3-hour block average THC concentration [1] in the catalytic oxidizer exhaust below the maximum concentration established during the performance test.
(3) Biofilter	Maintain the 24-hour block biofilter bed temperature within the range established according to § 63.2262(m).	Maintain the 24-hour block average THC concentration [1] in the biofilter exhaust below the maximum concentration established during the performance test.
(4) Control device other than a thermal oxidizer, catalytic oxidizer, or biofilter.	Petition the EPA Administrator for site-specific operating parameter(s) to be established during the performance test and maintain the average operating parameter(s) within the range(s) established during the performance test.	Maintain the 3-hour block average THC concentration [1] in the control device exhaust below the maximum concentration established during the performance test.

TABLE 2 TO SUBPART DDDD OF PART 63—OPERATING REQUIREMENTS—Continued

If you operate a(n) . . .	You must . . .	Or you must . . .
(5) Process unit that meets a compliance option in Table 1A to this subpart, or a process unit that generates debits in an emissions average without the use of a control device.	Maintain on a daily basis the process unit controlling operating parameter(s) within the ranges established during the performance test according to § 63.2262(n).	Maintain the 3-hour block average THC concentration [1] in the process unit exhaust below the maximum concentration established during the performance test.

[1] You may choose to subtract methane from THC measurements.
[2] You may forego the annual catalyst activity check during the calendar year when a performance test is conducted according to Table 4 to this subpart.

■ 19. Table 3 to subpart DDDD is revised to read as follows:

TABLE 3 TO SUBPART DDDD OF PART 63—WORK PRACTICE REQUIREMENTS

For the following process units at existing or new affected sources . . .	You must . . .
(1) Dry rotary dryers	Process furnish with a 24-hour block average inlet moisture content of less than or equal to 30 percent (by weight, dry basis); AND operate with a 24-hour block average inlet dryer temperature of less than or equal to 600 °F.
(2) Hardwood veneer dryers	Process less than 30 volume percent softwood species on an annual basis.
(3) Softwood veneer dryers	Minimize fugitive emissions from the dryer doors through (proper maintenance procedures) and the green end of the dryers (through proper balancing of the heated zone exhausts).
(4) Veneer redryers	Process veneer that has been previously dried, such that the 24-hour block average inlet moisture content of the veneer is less than or equal to 25 percent (by weight, dry basis).
(5) Group 1 miscellaneous coating operations	Use non-HAP coatings as defined in § 63.2292.
(6) Process units and control systems undergoing safety-related shutdown on and after August 13, 2021 except as noted in footnote "1" to this table.	Follow documented site-specific procedures such as use of automated controls or other measures that you have developed to protect workers and equipment to ensure that the flow of raw materials (such as furnish or resin) and fuel or process heat (as applicable) ceases and that material is removed from the process unit(s) as expeditiously as possible given the system design to reduce air emissions.
(7) Pressurized refiners undergoing startup or shutdown on and after August 13, 2021 except as noted in footnote "1" to this table.	Route exhaust gases from the pressurized refiner to its dryer control system no later than 15 minutes after wood is fed to the pressurized refiner during startup. Stop wood flow into the pressurized refiner no more than 15 minutes after wood fiber and exhaust gases from the pressurized refiner stop being routed to the dryer during shutdown.
(8) Direct-fired softwood veneer dryers undergoing startup or shutdown of gas-fired burners on and after August 13, 2021 except as noted in footnote "1" to this table.	Cease feeding green veneer into the softwood veneer dryer and minimize the amount of time direct gas-fired softwood veneer dryers are vented to the atmosphere due to the conditions described in § 63.2250(d).

[1] New or reconstructed affected sources that commenced construction or reconstruction after September 6, 2019 must comply with this requirement beginning on August 13, 2020 or upon initial startup, whichever is later.

■ 20. Table 4 to subpart DDDD is revised to read as follows:

TABLE 4 TO SUBPART DDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .
(1) each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A–1 (as appropriate).
(2) each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	determine velocity and volumetric flow rate.	Method 2 in addition to Method 2A, 2C, 2D, 2F, or 2G in appendices A–1 and A–2 to 40 CFR part 60 (as appropriate).
(3) each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	conduct gas molecular weight analysis.	Method 3, 3A, or 3B in appendix A–2 to 40 CFR part 60 (as appropriate).
(4) each process unit subject to a compliance option in table 1A or 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	measure moisture content of the stack gas.	Method 4 in appendix A–3 to 40 CFR part 60; OR Method 320 in appendix A to this part; OR ASTM D6348–03 (IBR, see § 63.14).
(5) each process unit subject to a compliance option in table 1B to this subpart for which you choose to demonstrate compliance using a total HAP as THC compliance option.	measure emissions of total HAP as THC.	Method 25A in appendix A–7 to 40 CFR part 60. You may measure emissions of methane using EPA Method 18 in appendix A–6 to 40 CFR part 60 and subtract the methane emissions from the emissions of total HAP as THC.

TABLE 4 TO SUBPART DDDD OF PART 63—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .
(6) each process unit subject to a compliance option in table 1A to this subpart; OR for each process unit used in calculation of an emissions average under § 63.2240(c).	measure emissions of total HAP (as defined in § 63.2292).	Method 320 in appendix A to this part; OR the NCASI Method IM/CAN/WP–99.02 (IBR, see § 63.14); OR the NCASI Method ISS/FP–A105.01 (IBR, see § 63.14); OR ASTM D6348–03 (IBR, see § 63.14) provided that percent R as determined in Annex A5 of ASTM D6348–03 is equal or greater than 70 percent and less than or equal to 130 percent.
(7) each process unit subject to a compliance option in table 1B to this subpart for which you choose to demonstrate compliance using a methanol compliance option.	measure emissions of methanol.	Method 308 in appendix A to this part; OR Method 320 in appendix A to this part; OR the NCASI Method CI/WP–98.01 (IBR, see § 63.14); OR the NCASI Method IM/CAN/WP–99.02 (IBR, see § 63.14); OR the NCASI Method ISS/FP–A105.01 (IBR, see § 63.14).
(8) each process unit subject to a compliance option in table 1B to this subpart for which you choose to demonstrate compliance using a formaldehyde compliance option.	measure emissions of formaldehyde.	Method 316 in appendix A to this part; OR Method 320 in appendix A to this part; OR Method 0011 in ''Test Methods for Evaluating Solid Waste, Physical/Chemical Methods'' (EPA Publication No. SW–846) for formaldehyde (IBR, see § 63.14); OR the NCASI Method CI/WP–98.01 (IBR, see § 63.14); OR the NCASI Method IM/CAN/WP–99.02 (IBR, see § 63.14); OR the NCASI Method ISS/FP–A105.01 (IBR, see § 63.14).
(9) each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in table 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	meet the design specifications included in the definition of wood products enclosure in § 63.2292; or determine the percent capture efficiency of the enclosure directing emissions to an add-on control device.	Methods 204 and 204A through 204F of 40 CFR part 51, appendix M, to determine capture efficiency (except for wood products enclosures as defined in § 63.2292). Enclosures that meet the definition of wood products enclosure or that meet Method 204 requirements for a permanent total enclosure (PTE) are assumed to have a capture efficiency of 100 percent. Enclosures that do not meet either the PTE requirements or design criteria for a wood products enclosure must determine the capture efficiency by constructing a TTE according to the requirements of Method 204 and applying Methods 204A through 204F (as appropriate). As an alternative to Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to this subpart.
(10) each reconstituted wood product press at a new or existing affected source or reconstituted wood product board cooler at a new affected source subject to a compliance option in table 1A to this subpart.	determine the percent capture efficiency.	a TTE and Methods 204 and 204A through 204F (as appropriate) of 40 CFR part 51, appendix M. As an alternative to installing a TTE and using Methods 204 and 204A through 204F, you may use the tracer gas method contained in appendix A to this subpart. Enclosures that meet the design criteria (1) through (4) in the definition of wood products enclosure, or that meet Method 204 requirements for a PTE (except for the criteria specified in section 6.2 of Method 204) are assumed to have a capture efficiency of 100 percent. Measured emissions divided by the capture efficiency provides the emission rate.
(11) each process unit subject to a compliance option in tables 1A and 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	establish the site-specific operating requirements (including the parameter limits or THC concentration limits) in table 2 to this subpart.	data from the parameter monitoring system or THC CEMS and the applicable performance test method(s).

■ 21. Table 6 to subpart DDDD is revised to read as follows:

TABLE 6 TO SUBPART DDDD OF PART 63—INITIAL COMPLIANCE DEMONSTRATIONS FOR WORK PRACTICE REQUIREMENTS

For each . . .	For the following work practice requirements . . .	You have demonstrated initial compliance if . . .
(1) Dry rotary dryer	Process furnish with an inlet moisture content less than or equal to 30 percent (by weight, dry basis) AND operate with an inlet dryer temperature of less than or equal to 600 °F.	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer meets the criteria of a ''dry rotary dryer'' AND you have a record of the inlet moisture content and inlet dryer temperature (as required in § 63.2263).

TABLE 6 TO SUBPART DDDD OF PART 63—INITIAL COMPLIANCE DEMONSTRATIONS FOR WORK PRACTICE REQUIREMENTS—Continued

For each . . .	For the following work practice requirements . . .	You have demonstrated initial compliance if . . .
(2) Hardwood veneer dryer	Process less than 30 volume percent softwood species.	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer meets the criteria of a "hardwood veneer dryer" AND you have a record of the percentage of softwoods processed in the dryer (as required in § 63.2264).
(3) Softwood veneer dryer	Minimize fugitive emissions from the dryer doors and the green end.	You meet the work practice requirement AND you submit with the Notification of Compliance Status a copy of your plan for minimizing fugitive emissions from the veneer dryer heated zones (as required in § 63.2265).
(4) Veneer redryers	Process veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis).	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that the dryer operates only as a redryer AND you have a record of the veneer inlet moisture content of the veneer processed in the redryer (as required in § 63.2266).
(5) Group 1 miscellaneous coating operations.	Use non-HAP coatings as defined in § 63.2292	You meet the work practice requirement AND you submit a signed statement with the Notification of Compliance Status that you are using non-HAP coatings AND you have a record showing that you are using non-HAP coatings.
(6) Process units and control systems undergoing safety-related shutdown on and after August 13, 2021, except as noted in footnote "1" to this table.	Follow documented site-specific procedures to ensure the flow of raw materials and fuel or process heat ceases and that material is removed from the process unit(s) as expeditiously as possible given the system design to reduce air emissions.	You meet the work practice requirement AND you have a record of safety-related shutdown procedures available for inspection by the delegated authority upon request.
(7) Pressurized refiners undergoing startup or shutdown on and after August 13, 2021, except as noted in footnote "1" to this table.	Route exhaust gases from the pressurized refiner to its dryer control system no later than 15 minutes after wood is fed to the pressurized refiner during startup. Stop wood flow into the pressurized refiner no more than 15 minutes after wood fiber and exhaust gases from the pressurized refiner stop being routed to the dryer during shutdown.	You meet the work practice requirement AND you have a record of pressurized refiner startup and shutdown procedures available for inspection by the delegated authority upon request.
(8) Direct-fired softwood veneer dryers undergoing startup or shutdown of gas-fired burners on and after August 13, 2021, except as noted in footnote "1" to this table.	Cease feeding green veneer into the softwood veneer dryer and minimize the amount of time direct gas-fired softwood veneer dryers are vented to the atmosphere due to the conditions described in § 63.2250(d).	You meet the work practice requirement AND you have a record of the procedures for startup and shutdown of softwood veneer dryer gas-fired burners available for inspection by the delegated authority upon request.

[1] New or reconstructed affected sources that commenced construction or reconstruction after September 6, 2019 must comply with this requirement beginning on August 13, 2020 or upon initial startup, whichever is later.

■ 22. Table 7 to subpart DDDD is revised to read as follows:

TABLE 7 TO SUBPART DDDD OF PART 63—CONTINUOUS COMPLIANCE WITH THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS

For . . .	For the following compliance options and operating requirements . . .	You must demonstrate continuous compliance by . . .
(1) Each process unit listed in Table 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 to this subpart based on monitoring of operating parameters.	Collecting and recording the operating parameter monitoring system data listed in Table 2 to this subpart for the process unit according to §§ 63.2269(a) through (b) and 63.2270; AND reducing the operating parameter monitoring system data to the specified averages in units of the applicable requirement according to calculations in § 63.2270; AND maintaining the average operating parameter at or above the minimum, at or below the maximum, or within the range (whichever applies) established according to § 63.2262.

TABLE 7 TO SUBPART DDDD OF PART 63—CONTINUOUS COMPLIANCE WITH THE COMPLIANCE OPTIONS AND OPERATING REQUIREMENTS—Continued

For . . .	For the following compliance options and operating requirements . . .	You must demonstrate continuous compliance by . . .
(2) Each process unit listed in Tables 1A and 1B to this subpart or used in calculation of an emissions average under § 63.2240(c).	Compliance options in Tables 1A and 1B to this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 to this subpart based on THC CEMS data.	Collecting and recording the THC monitoring data listed in Table 2 to this subpart for the process unit according to § 63.2269(d); AND reducing the CEMS data to 3-hour block averages according to calculations in § 63.2269(d); AND maintaining the 3-hour block average THC concentration in the exhaust gases less than or equal to the THC concentration established according to § 63.2262.
(3) Each process unit using a biofilter.	Compliance options in Tables 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	Conducting a repeat performance test using the applicable method(s) specified in Table 4 to this subpart [1] within 2 years following the previous performance test and within 180 days after each replacement of any portion of the biofilter bed media with a different type of media or each replacement of more than 50 percent (by volume) of the biofilter bed media with the same type of media.
(4) Each process unit using a catalytic oxidizer.	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	Checking the activity level of a representative sample of the catalyst at least annually [2] and taking any necessary corrective action to ensure that the catalyst is performing within its design range.
(5) Each process unit listed in Table 1A to this subpart, or each process unit without a control device used in calculation of an emissions averaging debit under § 63.2240(c).	Compliance options in Table 1A to this subpart or the emissions averaging compliance option in § 63.2240(c) and the operating requirements in Table 2 to this subpart based on monitoring of process unit controlling operating parameters.	Collecting and recording on a daily basis process unit controlling operating parameter data; AND maintaining the operating parameter at or above the minimum, at or below the maximum, or within the range (whichever applies) established according to § 63.2262.
(6) Each Process unit listed in Table 1B to this subpart using a wet control device as the sole means of reducing HAP emissions.	Compliance options in Table 1B to this subpart or the emissions averaging compliance option in § 63.2240(c).	Implementing your plan to address how organic HAP captured in the wastewater from the wet control device is contained or destroyed to minimize re-release to the atmosphere.
(7) Each process unit listed in Table 1B to this subpart using a control device other than a biofilter.	Compliance options in Tables 1B to this subpart	Conducting a repeat performance test using the applicable method(s) specified in Table 4 to this subpart [1] by August 13, 2023 or within 60 months following the previous performance test, whichever is later, and thereafter within 60 months following the previous performance test.

[1] When conducting a repeat performance test, the capture efficiency demonstration required in Table 4 to this subpart, row 9 is not required to be repeated with the repeat emissions test if the capture device is maintained and operated consistent with its design as well as its operation during the previous capture efficiency demonstration conducted according to Table 4 to this subpart, row 9 as specified in § 63.2267.

[2] You may forego the annual catalyst activity check during the calendar year when a performance test is conducted according to Table 4 to this subpart.

■ 23. Table 8 to subpart DDDD is revised to read as follows:

TABLE 8 TO SUBPART DDDD OF PART 63—CONTINUOUS COMPLIANCE WITH THE WORK PRACTICE REQUIREMENTS

For . . .	For the following work practice requirements . . .	You must demonstrate continuous compliance by . . .
(1) Dry rotary dryer	Process furnish with an inlet moisture content less than or equal to 30 percent (by weight, dry basis) AND operate with an inlet dryer temperature of less than or equal to 600 °F.	Maintaining the 24-hour block average inlet furnish moisture content at less than or equal to 30 percent (by weight, dry basis) AND maintaining the 24-hour block average inlet dryer temperature at less than or equal to 600 °F; AND keeping records of the inlet temperature of furnish moisture content and inlet dryer temperature.
(2) Hardwood veneer dryer	Process less than 30 volume percent softwood species.	Maintaining the volume percent softwood species processed below 30 percent AND keeping records of the volume percent softwood species processed.
(3) Softwood veneer dryer	Minimize fugitive emissions from the dryer doors and the green end.	Following (and documenting that you are following) your plan for minimizing fugitive emissions.

TABLE 8 TO SUBPART DDDD OF PART 63—CONTINUOUS COMPLIANCE WITH THE WORK PRACTICE REQUIREMENTS—Continued

For . . .	For the following work practice requirements . . .	You must demonstrate continuous compliance by . . .
(4) Veneer redryers	Process veneer with an inlet moisture content of less than or equal to 25 percent (by weight, dry basis).	Maintaining the 24-hour block average inlet moisture content of the veneer processed at or below of less than or 25 percent AND keeping records of the inlet moisture content of the veneer processed.
(5) Group 1 miscellaneous coating operations.	Use non-HAP coatings as defined in § 63.2292	Continuing to use non-HAP coatings AND keeping records showing that you are using non-HAP coatings.
(6) Process units and control systems undergoing safety-related shutdown on and after August 13, 2021, except as noted in footnote "1" to this table.	Follow documented site-specific procedures to ensure the flow of raw materials and fuel or process heat ceases and that material is removed from the process unit(s) as expeditiously as possible given the system design to reduce air emissions.	Keeping records showing that you are following the work practice requirements during safety-related shutdowns.
(7) Pressurized refiners undergoing startup or shutdown on and after August 13, 2021, except as noted in footnote "1" to this table.	Route exhaust gases from the pressurized refiner to its dryer control system no later than 15 minutes after wood is fed to the pressurized refiner during startup. Stop wood flow into the pressurized refiner no more than 15 minutes after wood fiber and exhaust gases from the pressurized refiner stop being routed to the dryer during shutdown..	Keeping records showing that you are following the work practice requirements during pressurized refiner startup and shutdown events.
(8) Direct-fired softwood veneer dryers undergoing startup or shutdown of gas-fired burners on and after August 13, 2021, except as noted in footnote "1" to this table.	Cease feeding green veneer into the softwood veneer dryer and minimize the amount of time direct gas-fired softwood veneer dryers are vented to the atmosphere due to the conditions described in § 63.2250(d).	Keeping records showing that you are following the work practice requirements while undergoing startup or shutdown of softwood veneer dryer direct gas-fired burners.

[1] New or reconstructed affected sources that commenced construction or reconstruction after September 6, 2019 must comply with this requirement beginning on August 13, 2020 or upon initial startup, whichever is later.

■ 24. Table 9 to subpart DDDD is revised to read as follows:

TABLE 9 TO SUBPART DDDD OF PART 63—REQUIREMENTS FOR REPORTS

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
(1) Compliance report	The information in § 63.2281(c) through (g)	Semiannually according to the requirements in § 63.2281(b).
(2) Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP before August 13, 2021.[1]	(i) Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	(ii) The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.
(3) Performance test report	The information required in § 63.7(g)	According to the requirements of § 63.2281(i).
(4) CMS performance evaluation, as required for CEMS under § 63.2269(d)(2).	The information required in § 63.7(g)	According to the requirements of § 63.2281(j).

[1] The requirement for the SSM report in row 2 of this table does not apply for new or reconstructed affected sources that commenced construction or reconstruction after September 6, 2019.

■ 25. Table 10 to subpart DDDD is revised to read as follows:

TABLE 10 TO SUBPART DDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART

Citation	Subject	Brief description	Applies to this subpart before August 13, 2021, except as noted in footnote "1" to this table	Applies to this subpart on and after August 13, 2021, except as noted in footnote "1" to this table
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes	Yes.
§ 63.2	Definitions	Definitions for standards in this part	Yes	Yes.
§ 63.3	Units and Abbreviations	Units and abbreviations for standards in this part	Yes	Yes.

TABLE 10 TO SUBPART DDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART—Continued

Citation	Subject	Brief description	Applies to this subpart before August 13, 2021, except as noted in footnote "1" to this table	Applies to this subpart on and after August 13, 2021, except as noted in footnote "1" to this table
§ 63.4	Prohibited Activities and Circumvention.	Prohibited activities; compliance date; circumvention, fragmentation.	Yes	Yes.
§ 63.5	Preconstruction Review and Notification Requirements.	Preconstruction review requirements of section 112(i)(1).	Yes	Yes.
§ 63.6(a)	Applicability	GP apply unless compliance extension; GP apply to area sources that become major.	Yes	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes	Yes.
§ 63.6(b)(6)	[Reserved].			
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	Yes	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes	Yes.
§ 63.6(c)(3)–(4)	[Reserved].			
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (*e.g.,* 3 years).	Yes	Yes.
§ 63.6(d)	[Reserved].			
§ 63.6(e)(1)(i)	General Duty to Minimize Emissions.	You must operate and maintain affected source in a manner consistent with safety and good air pollution control practices for minimizing emissions.	Yes	No, see § 63.2250 for general duty requirement.
§ 63.6(e)(1)(ii)	Requirement to Correct Malfunctions ASAP.	You must correct malfunctions as soon as practicable after their occurrence.	Yes	No.
§ 63.6(e)(1)(iii)	Operation and Maintenance Requirements.	Operation and maintenance requirements are enforceable independent of emissions limitations or other requirements in relevant standards.	Yes	Yes.
§ 63.6(e)(2)	[Reserved].			
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).	Requirement for SSM and SSMP; content of SSMP	Yes	No.
§ 63.6(f)(1)	SSM Exemption	You must comply with emission standards at all times except during SSM.	No. See § 63.2250(a)	No.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance/Finding of Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes	Yes.
§ 63.6(h)(1)	SSM Exemption	You must comply with opacity and visible emission standards at all times except during SSM.	NA	No.
§ 63.6(h)(2)–(9)	Opacity/Visible Emission (VE) Standards.	Requirements for opacity and visible emission standards.	NA	NA.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes	Yes.
§ 63.6(i)(15)	[Reserved].			
§ 63.6(i)(16)	Compliance Extension	Compliance extension and Administrator's authority	Yes	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with rule.	Yes	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule.	Yes	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes	Yes.
§ 63.7(b)(2)	Notification of Rescheduling.	If have to reschedule performance test, must notify Administrator as soon as practicable.	Yes	Yes.
§ 63.7(c)	Quality Assurance/Test Plan.	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes	Yes.
§ 63.7(e)(1)	Performance Testing	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	Yes	No, see § 63.2262(a)–(b).
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to rule and EPA test methods unless Administrator approves alternative.	Yes	Yes.

TABLE 10 TO SUBPART DDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART—Continued

Citation	Subject	Brief description	Applies to this subpart before August 13, 2021, except as noted in footnote "1" to this table	Applies to this subpart on and after August 13, 2021, except as noted in footnote "1" to this table
§ 63.7(e)(3)	Test Run Duration	Must have three test runs for at least the time specified in the relevant standard; compliance is based on arithmetic mean of three runs; specifies conditions when data from an additional test run can be used.	Yes	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an alternative test method.	Yes	Yes.
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status; keep data for 5 years.	Yes	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes	Yes.
§ 63.8(a)(2)	Performance Specifications.	Performance specifications in appendix B of part 60 of this chapter apply.	Yes	Yes.
§ 63.8(a)(3)	[Reserved].			
§ 63.8(a)(4)	Monitoring with Flares	Requirements for flares in § 63.11 apply	NA	NA.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with and good air pollution control practices.	Yes	Yes.
§ 63.8(c)(1)(i)	Operation and Maintenance of CMS.	Must maintain and operate CMS in accordance with § 63.6(e)(1).	Yes	No.
§ 63.8(c)(1)(ii)	Spare Parts for CMS	Must maintain spare parts for routine CMS repairs	Yes	Yes.
§ 63.8(c)(1)(iii)	Requirements to Develop SSMP for CMS.	Must develop and implement SSMP for CMS	Yes	No.
§ 63.8(c)(2)–(3)	Monitoring System Installation.	Must install to get representative emission of parameter measurements; must verify operational status before or at performance test.	Yes	Yes.
§ 63.8(c)(4)	CMS Requirements	CMS must be operating except during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts; COMS must have a minimum of one cycle of sampling and analysis for each successive 10-second period and one cycle of data recording for each successive 6-minute period; CEMS must have a minimum of one cycle of operation for each successive 15-minute period.	Yes	Yes.
§ 63.8(c)(5)	Continuous Opacity Monitoring System (COMS) Minimum Procedures.	COMS minimum procedures	NA	NA.
§ 63.8(c)(6)–(8)	CMS Requirements	Zero and high-level calibration check requirements; out-of-control periods.	Yes	Yes.
§ 63.8(d)(1)–(2)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc..	Yes. Refer to § 63.2269(a)–(c) for CPMS quality control procedures to be included in the quality control program.	Yes. Refer to § 63.2269(a)–(c) for CPMS quality control procedures to be included in the quality control program.
§ 63.8(d)(3)	Written Procedures for CMS.	Must keep quality control plan on record for 5 years. Keep old versions for 5 years after revisions. May incorporate as part of SSMP to avoid duplication..	Yes	No, see § 63.2282(f).
§ 63.8(e)	CMS Performance Evaluation.	Notification, performance evaluation test plan, reports.	Yes, for CEMS	Yes, for CEMS.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes, for CEMS	Yes, for CEMS.
§ 63.8(g)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1 hour averages computed over at least 4 equally spaced data points; data that can't be used in average; rounding of data.	Yes	Yes.
§ 63.9(a)	Notification Requirements	Applicability and State delegation	Yes	Yes.
§ 63.9(b)(1)–(2)	Initial Notifications	Submit notification 120 days after effective date; contents of notification.	Yes	Yes.
§ 63.9(b)(3)	[Reserved].			

TABLE 10 TO SUBPART DDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART—Continued

Citation	Subject	Brief description	Applies to this subpart before August 13, 2021, except as noted in footnote "1" to this table	Applies to this subpart on and after August 13, 2021, except as noted in footnote "1" to this table
§ 63.9(b)(4)–(5)	Initial Notifications	Submit notification 120 days after effective date; notification of intent to construct/reconstruct; notification of commencement of construct/reconstruct; notification of startup; contents of each.	Yes	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed best available control technology/lowest achievable emission rate.	Yes	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes	Yes.
§ 63.9(e)	Notification of Performance Test.	Notify EPA Administrator 60 days prior	Yes	Yes.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	Notify EPA Administrator 30 days prior	No	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification using COMS data; notification that exceeded criterion for relative accuracy.	Yes	Yes.
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents; due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes	Yes.
§ 63.10(a)	Recordkeeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than one source.	Yes	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	General Requirements; keep all records readily available; keep for 5 years.	Yes	Yes.
§ 63.10(b)(2)(i)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns.	Records of occurrence and duration of each startup or shutdown that causes source to exceed emission limitation.	Yes	No, see § 63.2282(a).
§ 63.10(b)(2)(ii)	Recordkeeping of Failures to Meet a Standard.	Records of occurrence and duration of each malfunction of operation or air pollution control and monitoring equipment.	Yes	No, see § 63.2282(a) for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment, and an estimate of the quantity of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
§ 63.10(b)(2)(iii)	Maintenance Records	Records of maintenance performed on air pollution control and monitoring equipment.	Yes	Yes.
§ 63.10(b)(2)(iv)–(v)	Actions Taken to Minimize Emissions During SSM.	Records of actions taken during SSM to minimize emissions.	Yes	No.
§ 63.10(b)(2)(vi) and (x)–(xi).	CMS Records	Malfunctions, inoperative, out-of-control	Yes	Yes.
§ 63.10(b)(2)(vii)–(ix)	Records	Measurements to demonstrate compliance with compliance options and operating requirements; performance test, performance evaluation, and visible emission observation results; measurements to determine conditions of performance tests and performance evaluations.	Yes	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes	Yes.
§ 63.10(c)(1)–(6), (9)–(14).	Records	Additional records for CMS	Yes	Yes.
§ 63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS.	No	No.
§ 63.10(c)(15)	Use of SSMP	Use SSMP to satisfy recordkeeping requirements for identification of malfunction, correction action taken, and nature of repairs to CMS.	Yes	No.
§ 63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	NA	NA.

TABLE 10 TO SUBPART DDDD OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO THIS SUBPART—Continued

Citation	Subject	Brief description	Applies to this subpart before August 13, 2021, except as noted in footnote "1" to this table	Applies to this subpart on and after August 13, 2021, except as noted in footnote "1" to this table
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes	Yes.
§ 63.10(d)(5)(i)	Periodic SSM Reports	Contents and submission of periodic SSM reports	Yes	No, see § 63.2281(d)–(e) for malfunction reporting requirements.
§ 63.10(d)(5)(ii)	Immediate SSM Reports	Contents and submission of immediate SSM reports	Yes	No.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEM on a unit; written copy of performance evaluation; 3 copies of COMS performance evaluation.	Yes	Yes.
§ 63.10(e)(3)	Reports	Excess emission reports	No	No.
§ 63.10(e)(4)	Reporting COMS Data	Must submit COMS data with performance test data	NA	NA.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for EPA Administrator to waive	Yes	Yes.
§ 63.11	Control Device and Work Practice Requirements.	Requirements for flares and alternative work practice for equipment leaks.	NA	NA.
§ 63.12	State Authority and Delegations.	State authority to enforce standards	Yes	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes	Yes.
§ 63.14	Incorporations by Reference.	Test methods incorporated by reference	Yes	Yes.
§ 63.15	Availability of Information and Confidentiality.	Public and confidential information	Yes	Yes.
§ 63.16	Performance Track Provisions.	Requirements for Performance Track member facilities.	Yes	Yes.

[1] New or reconstructed affected sources that commenced construction or reconstruction after September 6, 2019 must comply with the requirements in column 5 of this table beginning on August 13, 2020 or upon initial startup, whichever is later.

[FR Doc. 2020–12725 Filed 8–12–20; 8:45 am]

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Part III

Department of Commerce

International Trade Administration

19 CFR Part 351

Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws; Proposed Rule

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 200626–0170]

RIN 0625–AB10

Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws

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

ACTION: Proposed rule; request for comments.

SUMMARY: Pursuant to its authority under Title VII of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) proposes to modify its regulations under Part 351 of Title 19 to improve administration and enforcement of the antidumping duty (AD) and countervailing duty (CVD) laws. Specifically, Commerce proposes to modify its regulation concerning the time for submission of comments pertaining to industry support in AD and CVD proceedings; to modify its regulation regarding new shipper reviews; to modify its regulation concerning scope matters in AD and CVD proceedings; to promulgate a new regulation concerning circumvention of AD and CVD orders; to promulgate a new regulation concerning covered merchandise referrals received from U.S. Customs and Border Protection (CBP); to promulgate a new regulation pertaining to Commerce requests for certifications from interested parties to establish whether merchandise is subject to an AD or CVD order; and to modify its regulation regarding importer reimbursement certifications filed with CBP. Finally, Commerce proposes to modify its regulations regarding letters of appearance in AD and CVD proceedings and importer filing requirements for access to business proprietary information. Commerce is seeking public comments on this proposed rule.

DATES: To be assured of consideration, written comments must be received no later than September 14, 2020.

ADDRESSES: Submit comments through the Federal eRulemaking Portal at *http://www.Regulations.gov,* Docket No. ITA–2020–0001. Comments may also be submitted by mail or hand delivery/courier, addressed to Jeffrey I. Kessler, Assistant Secretary for Enforcement and Compliance, Room 1870, Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230.

Commerce will consider all comments received before the close of the comment period. All comments responding to this document will be a matter of public record and will generally be available on the Federal eRulemaking Portal at *http://www.Regulations.gov.* Commerce will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive or protected information.

Any questions concerning the process for submitting comments should be submitted to Enforcement & Compliance (E&C) Communications office at (202) 482–0063 or *ECCOMMS@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Scott McBride at (202) 482–6292; David Mason at (202) 482–5051; or Jessica Link at (202) 482–1411.

SUPPLEMENTARY INFORMATION:

General Background

Title VII of the Act vests Commerce with authority to administer the AD/CVD laws, known as trade remedies. In particular, section 731 of the Act directs Commerce to impose an AD order on merchandise entering the United States when it determines that a producer or exporter is selling a class or kind of foreign merchandise into the United States at less than fair value (*i.e.,* dumping), and material injury or threat of material injury to that industry in the United States is found by the International Trade Commission (ITC). Section 701 of the Act directs Commerce to impose a CVD order when it determines that a government of a country or any public entity within the territory of a country is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise that is imported into the United States, and material injury or threat of material injury to that industry in the United States is found by the ITC.[1]

The purpose of the regulatory changes proposed in this rulemaking is to strengthen the administration and enforcement of AD/CVD laws, make such administration and enforcement more efficient, and create new enforcement tools for Commerce to address circumvention and evasion of trade remedies. If adopted, these changes would equip Commerce to better fulfill the Congressional intent behind the AD/CVD laws—namely, to protect U.S. companies, workers, farmers, and ranchers from the injurious effects of unfairly traded imports. In addition, if adopted, these changes would promote the Administration's objective to enforce the AD/CVD laws rigorously, and to aggressively pursue parties that seek to skirt them. Moreover, the proposed regulations facilitate a stronger and more efficient administration of the AD and CVD laws in the context of Commerce's proceedings. The proposed changes are summarized briefly here, and discussed further below:

- Modify section 351.203 to provide for the establishment of a deadline by which parties may file comments on industry support. At present, comments on industry support may be filed up to and including the scheduled date of an initiation determination, leaving Commerce little or no time to consider fully such comments for purposes of determining whether the petition has sufficient industry support. Therefore, such modifications are necessary to enhance Commerce's ability to consider and act upon such comments in a timely manner.
- Revise numerous provisions to section 351.214 concerning new shipper reviews to address abuse of those procedures and ensure that the sales to be reviewed are, in fact, *bona fide* sales. These changes are necessary to conform the regulation to recent statutory changes[2] and to ensure Commerce expends its limited resources on new shipper reviews only where warranted.
- Revise numerous provisions to section 351.225 concerning scope inquiries by adopting new procedures to preserve resources, expedite deadlines, and remove unnecessary and burdensome notice and service requirements. These revisions also clarify and codify the substantive basis for Commerce's scope rulings pertaining to country of origin, scope language interpretation, and ''mixed-media''

[1] A countervailable subsidy is further defined under section 771(5)(B) of the Act as existing when: A government or any public entity within the territory of a country provides a financial contribution; provides any form of income or price support; or makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments; and a benefit is thereby conferred. To be countervailable, a subsidy must be specific within the meaning of section 771(5A) of the Act.

[2] Trade Facilitation and Trade Enforcement Act of 2015, Public Law 114–125, 130 Stat. 122, 155 (2016).

products, which incorporate subject merchandise in some form, in light of past practice and various court decisions. These revisions also ensure that AD/CVD duties are appropriately applied to products determined to be subject to the scope of the order.

• Adopt new section 351.226 concerning circumvention inquiries, which largely mirrors the proposed scope procedures. These provisions also clarify Commerce's authority to self-initiate circumvention inquiries and apply circumvention determinations on a ''country-wide'' basis.

• Adopt new section 351.227 concerning ''covered merchandise referrals'' from CBP under section 517 of the Act, which largely mirror the proposed scope and circumvention procedures and allow Commerce maximum flexibility to further develop its procedures and practice as it gains more experience in this new area of the law.

• Adopt new section 351.228, which is specifically targeted at improving enforcement of AD and CVD orders and ensuring the effectiveness of those orders. Under new section 351.228, Commerce may determine to impose a certification requirement on an importer or another interested party to further ensure that entries of merchandise subject to an AD/CVD order are appropriately classified as subject merchandise.

• Modify section 351.402 regarding importer certifications for the payment or reimbursement of AD/CVD duties on entries subject to AD orders to account for updated procedures.

• Adopt necessary changes, consistent with certain substantive proposed rules discussed above, to two procedural provisions: Section 351.103(d)(1) pertaining to letters of appearance and public service lists, and section 351.305(d) pertaining to importer filing requirements for access to business proprietary information in Commerce's proceedings.

Explanation of the Proposed Rules

Comment Period on Industry Support Prior to Initiation Determination—Section 351.203

Once an AD petition under section 732(b) of the Act or a CVD petition under section 702(b) is filed, the statute provides Commerce with 20 days in which to determine whether the elements necessary for initiation of an investigation have been satisfied, including the requirement to demonstrate industry support. In exceptional circumstances, Commerce may extend the 20-day period to a maximum of 40 days solely for purposes of determining industry support. At present, comments on industry support may be filed up to and including the scheduled date of an initiation determination, leaving Commerce little or no time to consider fully such comments for purposes of determining whether the petition has sufficient industry support. To address this, Commerce proposes to modify section 351.203 to provide for the establishment of a deadline for comments no later than five business days before the scheduled date of initiation; and rebuttal comments no later than two days thereafter.

New Shipper Reviews—Section 351.214

Commerce proposes to modify its regulation pertaining to new shipper reviews under section 751(a)(2)(B) of the Act and section 351.214. Section 751(a)(2)(B) of the Act provides a procedure by which exporters or producers who did not export the product during the original AD or CVD investigation can obtain their own individual dumping margin or countervailing duty rate on an accelerated basis (referred to as a ''new shipper review''). This provision was enacted in the Uruguay Round Agreements Act (URAA) in 1994,[3] and Commerce promulgated its accompanying new shipper review regulation, section 351.214, in 1997.[4] This regulation provides the rules regarding requests for new shipper reviews and procedures for conducting such reviews, and is largely unchanged since 1997. Under this provision, Commerce conducts a new shipper review to establish an individual weighted-average dumping margin or countervailable subsidy rate if it receives a properly documented request for review.

In 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law, which contains Title IV—Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title ''Enforce and Protect Act of 2015'' or ''EAPA'').[5] Section 433 of EAPA (entitled ''Addressing Circumvention by New Shippers'') made two important revisions to the new shipper review procedures under section 751(a)(2)(B) of the Act.

First, in legislative history explaining these amendments, Congress expressed concern regarding the abuse of new shipper review procedures to avoid AD/CVD duties.[6] One area of abuse in particular involved the ability of an importer of a new shipper's merchandise to post a bond or security in lieu of cash deposits for entries of that merchandise for the duration of the new shipper review.[7] Therefore, to prevent such abuse of these procedures, section 433 of EAPA removed the ability for importers to post AD/CVD-specific bonds or security in lieu of AD/CVD cash deposits by striking this provision from section 751(a)(2)(B) of the Act.[8]

Second, section 433 added a provision that the individual dumping margin or countervailing duty rate determined for a new shipper must be based on *bona fide* sales in the United States, and codified the factors that Commerce has historically used to determine whether a sale is *bona fide.*[9] In explaining this proposed change, Congress identified abuse of new shipper review procedures where a new shipper ''enter{s} into a scheme to structure a few sales to show little or no dumping or subsidization when those sales are reviewed . . . resulting in a low or zero antidumping or countervailing duty rate for that

[3] *See* Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103–316, vol. 1, at 816 (1994) (SAA) (''Article 9.5 {of the Anti-Dumping Agreement} establishes special procedures for imposing antidumping duties on exporters or producers who did not export the product to the importing country during the original period of investigation (so-called 'new shippers').'').

[4] *See Antidumping Duties; Countervailing Duties, Proposed Rule,* 61 FR 7308, 7317–18 (Feb. 27, 1996) (*1996 Proposed Rule*) (discussing the proposed new shipper review regulation); *Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27318–19 (May 19, 1997) (*1997 Final Rule*) (discussing the finalized new shipper review regulation).

[5] Public Law 114–125, 130 Stat. 122, 155 (2016).

[6] *See* H.R. Rep. No. 114–114, at 89 (2015) (''The Committee is concerned that the ability of new exporters and producers to obtain their own individual weighted average dumping margins or individual countervailing duty rates from the Department of Commerce on an expedited basis (known as 'new shipper reviews') has been abused to avoid antidumping and countervailing duties.'')

[7] *Id.* (''One area of abuse is taking advantage of the option to post a bond or security, rather than the normally required cash deposit, while the Department of Commerce conducts a new shipper review. This allows an importer to bring in large quantities of dumped or subsidized merchandise from the exporter or producer under review without having to provide in cash the full amount of estimated duties that could be owed on those imports. Having to put up less capital makes it easier for unscrupulous importers to enter into schemes to bring in dumped and subsidized merchandise with the intent of disappearing or otherwise not being available to pay the antidumping and countervailing duties owed on the imports. This loophole would be closed by requiring importers of merchandise from a producer or exporter in a new shipper review to provide a cash deposit of estimated duties.'')

[8] *See* § 433, 130 Stat. at 171; *see also* H.R. Rep No. 114–376, at 192 (2015) (Conf. Rep.).

[9] *See* § 433, 130 Stat. at 171; *see also* H.R. Rep. No. 114–376 at 192–193.

producer or exporter.'' [10] As a result of such scheme: ''An importer could then bring in that producer or exporter's merchandise at highly dumped or subsidized prices but with little or no cash deposit. The problem is further exacerbated if the importer disappears or otherwise becomes unavailable to pay the duties owed and U.S. Customs and Border Protection (CBP) has little or no cash deposit against which to recover the owed duties.'' [11] Accordingly, to protect against such schemes,[12] section 433 added section 751(a)(2)(B)(iv) to the Act, providing that, in determining whether the sales in the United States of a new shipper made during the period covered by the review is *bona fide,* Commerce shall consider with respect to such sales: Pricing, commercial quantities, timing, expenses, resale at profit, and arm's-length basis. Additionally, under section 751(a)(2)(B)(iv), Commerce may consider any other factor which it determines to be relevant as to whether such sales are, or are not, likely to be typical of those the new shipper will make after completion of the review.

As a result of the above, Commerce is making conforming amendments to section 351.214 discussed below. The modifications to section 351.214 would clarify the circumstances under which Commerce will expend the resources required to reach a determination in a review conducted under section 751(a)(2)(B) of the Act, among other issues.

Revised paragraph (a) would update the introduction to section 351.214 by including reference to current section 751(a)(2)(B) of the Act and the statutory requirement for *bona fide* sales in a new shipper review. Consistent with the revised statutory language in section 751(a)(2)(B)(iv) of the Act, proposed revisions to paragraph (b)(1), pertaining to requests for new shipper reviews, provide that, in requesting a new shipper review, an exporter or producer must not only satisfy the export or sale requirement but must also demonstrate the existence of a *bona fide* sale. With regard to existing section 351.214(b), Commerce explained in the *1996 Proposed Rule* that it was requiring certain certifications from the requestor ''demonstrating that the party is a *bona fide* new shipper.'' [13] In doing so, Commerce explained:

> The purpose of these certifications is to ensure that new shipper status is not achieved through mere restructuring of corporate organizations or channels of distribution. In accordance with the SAA, at 875, this provision also makes clear that parties will not be granted new shipper status merely because they were not individually examined during the investigation.[14]

In responding to comments in the *1997 Final Rule,* Commerce noted that it had received one request that Commerce ''clarify that a person can request a new shipper review as long as there is a bona fide sale of subject merchandise to the United States, even if that merchandise has not yet been shipped to or entered the United States.'' [15] Although Commerce did not address the ''*bona fide*'' nature of such sale, Commerce explained:

> The initiation of new shipper reviews and the issuance of questionnaires requires an expenditure of administrative resources by the Department that is not inconsiderable when cumulated across all AD/CVD proceedings. In our view, the Department should not expend these resources unless there is a reasonable likelihood that there ultimately will be a transaction for the Department to review; namely, as discussed below, an entry and sale to an unaffiliated purchaser.[16]

Consistent with this earlier discussion, and in light of the concerns related to circumvention and abuse of new shipper review procedures expressed by Congress in enacting section 751(a)(2)(B)(iv) of the Act, Commerce proposes to expend its resources in conducting a new shipper review only where there is a reasonable likelihood that there ultimately will be a *bona fide* sale for Commerce to review. Thus, proposed revisions to paragraph (b)(1) provide that a producer or exportermay request a new shipper review if it can demonstrate the existence of a *bona fide* sale. Commerce expects that a producer or exporter could make such a demonstration by complying with the proposed requirements in proposed paragraph (b)(2)(iv), and proposed revisions to paragraph (b)(2)(v).

Under proposed paragraph (b)(2)(iv), a request for a new shipper review must contain (1) a certification from the unaffiliated customer in the United States that it did not purchase the subject merchandise from the producer or exporter during the period of investigation, and (2) a certification from the unaffiliated customer in the United States that it will provide necessary information requested by Commerce regarding its purchase of subject merchandise. With respect to (1), this language was previously discussed in the *1997 Final Rule,* among a number of other suggestions which were aimed at discouraging meritless requests for new shipper reviews.[17] At the time, Commerce was beginning to develop its practice with respect to new shipper reviews, which was a new procedure adopted in the URAA in 1994.[18] In light of this limited experience, Commerce declined to adopt a proposal to require additional documentation from an exporter claiming to be a new shipper, or to require certifications from the purchaser, explaining that ''{w}hile the Department has no interest in dealing with meritless claims for new shipper reviews, by the same token, we do not want to discourage meritorious claims.'' [19] However, in light of Commerce's past 20 years of practice in this area, and the circumvention and abuse of procedures concerns expressed by Congress in adopting the 2016 amendments to the new shipper review statute, we believe that the additional requirements above are needed to discourage meritless claims, and to preserve Commerce's resources in conducting new shipper reviews where there is a reasonable likelihood that the unaffiliated customer will participate in the review.

Consistent with these same considerations, proposed paragraph (b)(2)(v) (currently paragraph (b)(2)(iv)) requires specific documentation which would allow Commerce to conduct a *bona fide*s analysis under section 751(a)(2)(B)(iv) of the Act. This includes information pertaining to whether shipments were made in commercial quantities, the date of any subsequent sales, circumstances surrounding the sale, such as price, expenses, resale for profit, and the arm's-length basis of the sale. Additionally, documentation establishing the business activities of the producer or exporter would also be required under this proposed paragraph (*i.e.,* the producer's or exporter's offers to sell merchandise in the United States, identification of the complete circumstances surrounding the exporter's or producers' sales to the United States, home market or any third country markets (if applicable), an explanation of any non-producing exporter's relationship with its

[10] H.R. Rep. No. 114–114 at 89.

[11] *Id.*

[12] *Id.* (''This provision would prevent such arrangements by requiring that the U.S. sales in a new shipper review be bona fide sales and setting out criteria for identifying bona fide sales, reflecting the Department of Commerce's current regulations and practices in this area.'')

[13] *See 1996 Proposed Rule,* 61 FR at 7317–18.

[14] *See 1997 Final Rule,* 62 FR at 27318–19.

[15] *Id.,* 62 FR at 27319.

[16] *Id.*

[17] *Id.,* 62 FR at 27319.

[18] *See 1996 Proposed Rule,* 61 FR at 7317.

[19] *See 1997 Final Rule,* 62 FR at 27319.

producer/supplier, and identification of the producer's or exporter's relationship to the first unrelated U.S. customer).

Proposed revisions to paragraph (c) provide a conforming amendment to reflect the change in numbering in paragraph (b)(2).

Proposed paragraph (d) would be entitled ''Initiation of new shipper review.'' Paragraph (d)(1) would clarify that Commerce will initiate a new shipper review if the requirements for a request for new shipper review under paragraph (b) are satisfied. Paragraphs (d)(1)–(3), discussing time limits for the initiation of a new shipper review, would remain unchanged (with the exception of a minor grammatical edit in paragraph (d)(2)). These provisions would require Commerce to initiate a new shipper review in the calendar month immediately following the anniversary month, or semi-annual anniversary month of the order, as applicable. This is consistent with the statement in the SAA that new exporters or producers may request an accelerated new shipper review at any time.[20] Paragraph (d)(4) would provide that if Commerce determines that the requirements for a request for new shipper review under paragraph (b) have not been satisfied, the Secretary will reject the request and provide a written explanation of the reasons for the rejection.

Proposed revisions to paragraph (e) would eliminate language that requires Commerce to allow, at the option of the importer, the posting of an AD/CVD-specific bond or security in lieu of an AD/CVD cash deposit for each entry of the subject merchandise. This proposed modification implements the same amendment to section 751(a)(2)(B) of the Act under section 433 of the EAPA as discussed above, which eliminated the option of posting an AD/CVD bond or security in new shipper reviews.[21] Proposed paragraph (e) would also clarify that, when a new shipper review is initiated, Commerce will direct CBP to suspend or continue to suspend liquidation of any relevant unliquidated entry of subject merchandise at the applicable cash deposit rate.

Proposed revisions to paragraph (f) would expand on Commerce's ability to rescind new shipper reviews, in whole or in part, where a producer or exporter timely withdraws its request for a new shipper review, or where Commerce determines there is an absence of entry or sale to an unaffiliated customer. Proposed new paragraph (f)(3) would provide that Commerce likewise may rescind a new shipper review, in whole or in part, where (1) information that Commerce considers necessary to conduct a *bona fide* sales analysis is not on the record, or (2) the producer or exporter at issue has failed to demonstrate, to the satisfaction of Commerce, the existence of a *bona fide* sale to an unaffiliated customer. This new provision would be consistent with Commerce's existing practice in both new shipper reviews and administrative reviews, that Commerce cannot conduct a review where there is no *bona fide* sale.[22] This would also clarify that Commerce has the option to rescind where the information required for its analysis is missing. However, nothing in this provision is intended to preclude Commerce from completing the new shipper review by applying the provision governing facts available in section 776 of the Act where necessary.

Commerce proposes no changes to paragraphs (g)–(j), and current paragraphs (k) and (l) would be re-lettered to (l) and (m), respectively. Further, re-lettered paragraph (l) contains minor formatting amendments and also removes reference to the posting of an AD/CVD-specific bond or security in lieu of an AD/CVD cash deposit pursuant to the changes in paragraph (e) discussed above.

Lastly, proposed paragraph (k) would clarify the factors Commerce will consider in making a *bona fide* sale determination. This paragraph would explain that Commerce shall consider the enumerated factors in section 751(a)(2)(B)(iv) and identifies, for purposes of section 751(a)(2)(B)(iv)(VII) of the Act, the additional factors that Commerce shall consider in determining whether the examined sale is typical, or not, of any future sales by the new shipper. These additional factors include whether the parties in the transaction were established for purposes of the sale(s) in question after the imposition of the order, whether the parties have other lines of business unrelated to the subject merchandise, whether there is an established history of duty evasion with respect to new shipper reviews under the order or circumvention in the same or similar industry, the quantity of sales, and any other factor which Commerce determines to be relevant with respect to the future selling behavior of the producer or exporter, including any other indicia that the sale was not commercially viable. These additional factors would aid Commerce in developing a consistent practice of evaluating typical behavior of the new shipper. Additionally, we believe this proposal reflects Commerce's past twenty years of practice in this area, and would address the concerns regarding circumvention, duty evasion, and abuse of procedures expressed by Congress in adopting the 2016 amendments to the new shipper review statute.

Scope—Section 351.225

Upon issuance of an AD or CVD order, the Act requires Commerce to provide a description of the class or kind of merchandise subject to the order at issue (*i.e.,* subject merchandise).[23] That description is known as the scope of the AD/CVD order. Because the statute ''does not require Commerce to define the class or kind of foreign merchandise in any particular manner{,} Commerce has the authority to fill that gap and define the scope of an order consistent with the countervailing duty and antidumping duty laws.'' [24] Further, ''under the statutory scheme, Commerce owes deference to the intent of the proposed scope of an antidumping investigation as expressed in an antidumping petition.'' [25] Thus, Commerce retains considerable discretion to define the scope of the order to ensure that all imports causing injury have been addressed, and, additionally, may take into account potential circumvention and duty evasion concerns in crafting the scope language.[26]

After issuance of an AD/CVD order, Commerce directs CBP to ''suspend liquidation'' and collect cash deposits, or estimated amounts of duties, on appropriate entries subject to the scope of the order corresponding to the margins of dumping established under an AD order and the countervailable duty rates established under a CVD order.[27] On a yearly basis, interested parties may request that Commerce conduct an administrative review to determine the appropriate dumping margin or CVD rate for entries subject to

[20] *See* SAA at 816.

[21] *See* § 433, 130 Stat. at 171; *see also* H.R. Rep. No. 114–376 at 192–193.

[22] *See, e.g., Haixing Jingmei Chem. Prods. Sales Co.* v. *United States,* 357 F. Supp. 3d 1337, 1351 (Ct. Int'l Trade 2018).

[23] *See* section 706(a)(2) of the Act; section 736(a)(2) of the Act; section 771(25) of the Act.

[24] *See Canadian Solar, Inc.* v. *United States,* 918 F.3d 909, 917 (Fed. Cir. 2019) (internal citations and punctuation omitted) (*Canadian Solar*).

[25] *Ad Hoc Shrimp Trade Action Committee* v. *United States,* 637 F. Supp. 2d 1166, 1174 (CIT 2009).

[26] *See Canadian Solar,* 918 F.3d at 921–22 (''It is unnecessary for Commerce to engage in a game of whack-a-mole when it may reasonably define the class or kind of merchandise in a single set of orders, and within the context of a single set of investigations, to include all imports causing injury.'').

[27] *See generally* section 706 of the Act; section 736 of the Act. *See also* 19 CFR 351.211.

the order during the previous review year.[28] Commerce directs CBP to ''lift suspension of liquidation'' and assess final duties according to Commerce's administrative review procedures.[29] Under this dual statutory framework, Commerce is the agency charged with establishing and interpreting the scope of AD/CVD orders,[30] and CBP is the agency charged with applying and enforcing the AD/CVD orders by—upon instruction from Commerce—collecting appropriate cash deposits and assessing final duties on appropriate entries of merchandise into the United States covered by the scope of an order.[31] As part of its statutory responsibility ''to fix the amount of duty owed on imported goods{,}'' CBP ''is both empowered and obligated to determine in the first instance whether goods are subject to existing {AD/CVD orders}.'' [32] Pursuant to 19 U.S.C. 1514(b) (section 514 of the Act), this ''determination is then 'final and conclusive' unless an interested party seeks a scope ruling from Commerce (which ruling would then be reviewable pursuant to {19 U.S.C. 1516a}).'' [33]

Furthermore, each agency has its own authority to ensure the effectiveness of the trade remedy laws in accordance with its statutory mandate. Congress, and the courts, have long recognized that Commerce has the vested authority to administer the trade remedy laws in accordance with their intent, and has the discretion to take appropriate enforcement measures to ensure the effectiveness of its AD/CVD orders by preventing duty evasion and circumvention.[34] As discussed below, Commerce has several existing mechanisms to ensure effective enforcement of its AD/CVD orders, while CBP has its own authority to conduct civil administrative investigations of duty evasion of AD/CVD orders, including as provided for in section 517 of the Act.[35] In exercising their separate authorities, Commerce and CBP frequently work together to ensure the effectiveness of the trade remedy laws. In this proposed rule, Commerce has taken additional steps to ensure that it continues to exercise its authority to administer the AD/CVD laws, in cooperation with CBP, and in accordance with its mandate to prevent duty evasion and circumvention.

Because the scope of an AD/CVD order is written in general terms, questions may arise as to whether a certain product is within the scope, and therefore covered by the order. In such cases, Commerce's existing regulation, section 351.225, describes the applicable procedures and standards concerning ''scope rulings'' that Commerce will issue upon application of an interested party, or by initiating a ''scope inquiry.'' Additionally, section 351.225 provides procedures concerning circumvention proceedings conducted pursuant to section 781 of the Act. Under these provisions, Commerce may determine that certain products are circumventing existing AD/CVD orders, and thus lawfully may be considered within the scope of the order(s), even when the products do not fall within the literal scope language.[36] Commerce proposes to revise section 351.225 in its entirety to clarify and improve Commerce's procedures and standards related to scope matters which have evolved since Commerce's current scope regulations were issued in 1997.[37] As discussed further below, Commerce proposes to adopt new section 351.226 to address circumvention matters.

We propose revising paragraph (a) to set forth the general purpose and rules which govern scope proceedings. This is distinguished from the current paragraph (a), which governs both scope proceedings and circumvention proceedings. Commerce is now proposing that circumvention proceedings under section 781 of the Act be covered by a new regulation, proposed section 351.226. An additional significant change in this proposed rule, which would be codified in proposed paragraph (a) and throughout revised section 351.225, eliminates the distinction between a simpler, or informal, scope ruling procedure (*i.e.,* a ruling based upon the application) and a formal scope inquiry. This is discussed in further detail below. Proposed paragraph (a) also explains that, unless otherwise specified in revised section 351.225, Commerce's existing procedures contained in subpart C (*i.e.,* relating to factual information (sections 351.102(b)(21) and 351.301) and the extension of time limits (section 351.302)) apply to scope inquiries.

Additionally, regarding the term ''clarify'' in current paragraph (a), the courts have used this term to try to draw

[28] *See* section 751(a)(1) of the Act.

[29] *See* 19 CFR 351.212–213.

[30] *See Xerox Corp.* v. *United States,* 289 F.3d 792, 795 (Fed. Cir. 2002) (''Commerce should in the first instance decide whether an antidumping order covers particular products, because the order's meaning and scope are issues particularly within the expertise of that agency.'') (internal citations and punctuation omitted).

[31] *See Sunpreme Inc.* v. *United States,* 892 F.3d 1186, 1188 (Fed. Cir. 2018) (*Sunpreme I*). In *Sunpreme I,* the CAFC held that a party cannot invoke the CIT's jurisdiction under 28 U.S.C. 1581(i) to challenge CBP's decision to apply an AD/CVD order to the party's merchandise where the party had an available remedy by seeking a scope ruling from Commerce, which subsequently could have been challenged under 28 U.S.C. 1581(c). *Id.* at 1192–94. In *Sunpreme Inc.* v. *United States,* 924 F.3d 1198 (Fed. Cir. 2019) (*Sunpreme II*), the CAFC upheld Commerce's affirmative scope ruling, however, a divided panel found that CBP had exceeded its authority when it suspended liquidation based on its interpretation of ambiguous scope language prior to Commerce's scope ruling, and, therefore, Commerce could not lawfully order the continuation of suspension of liquidation prior to the initiation of Commerce's scope inquiry. *See* 924 F.3d at 1212–15. In *Sunpreme Inc.* v. *United States,* 946 F.3d 1300 (Fed. Cir. 2020) (*Sunpreme III*), the CAFC vacated *Sunpreme II* in part and held that ''it is within Customs'{} authority to preliminarily suspend liquidation of goods based on an ambiguous {AD or CVD} order, such that the suspension may be continued following a scope inquiry by Commerce.'' 946 F.3d at 1303.

[32] *See Sunpreme III,* 946 F.3d at 1317 (citing 19 U.S.C. 1500(c); Section 500(c) of the Act).

[33] *See TR International Trading Co.* v. *United States,* Ct. No. 19–00022, Slip Op. 20–34 at *7 (CIT Mar. 16, 2020) (citing *Sunpreme III,* 946 F.3d at 1318) (*TR International*) (appeal pending) (referencing section 516 of the Act); *see also Fujitsu Ten Corp.* v. *United States,* 957 F. Supp. 245, 248 (CIT 1997) (''The statute recognizes Customs makes the initial determination that an existing antidumping order applies to a specific entry of merchandise. The statute states that such a decision is 'final and conclusive' unless it is appealed by petition to Commerce.'' (citations omitted)).

[34] *See generally* section 781 of the Act; SAA at 892–95; *Tung Mung Development Co., Ltd.* v. *United States,* 219 F. Supp. 2d 1333, 1343 (CIT 2002) (*Tung Mung*) (''Commerce has a duty to avoid the evasion of antidumping duties. {Commerce} 'has been vested with authority to administer the antidumping laws in accordance with the legislative intent. To this end, {Commerce} has a certain amount of discretion {to act} . . . with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law.' '') (quoting *Mitsubishi Elec. Corp.* v. *United States,* 700 F. Supp. 538, 555 (CIT 1988) (*Mitsubishi I*), *aff'd* 898 F.2d 1577, 1583 (Fed. Cir. 1990) (*Mitsubishi II*)). *See also Torrington Co.* v. *United States,* 745 F. Supp. 718, 721 (CIT 1990), *aff'd* 938 F.2d 1276 (Fed. Cir. 1991).

[35] Additionally, Homeland Security Investigations (HSI), at the Department of Homeland Security, has the authority to investigate criminal violations related to illegal evasion of payment of required duties, including payment of AD/CV duties. *See, e.g.,* 18 U.S.C. 542.

[36] *See Target Corp.* v. *United States,* 609 F.3d 1352, 1355 (Fed. Cir. 2010).

[37] *See 1996 Proposed Rule,* 61 FR at 7321–22; *1997 Final Rule,* 62 FR at 27327–30. Section 351.225 in its current form adopted many of the existing procedures from the preceding regulations, sections 353.29 and 355.29, which were issued in 1990. *See 1996 Proposed Rule,* 61 FR at 7321 (''With a few exceptions, section 351.225 is substantively unchanged from existing §§ 353.29 and 355.29{.}''); *see also Antidumping and Countervailing Duties, Interim Final Rule,* 55 FR 9046 (March 9, 1990) (*1990 Interim Final Rule*) (''To implement section 781 of the Act (as added by section 1321 of {the Omnibus Trade and Competitiveness Act of 1988}), new §§ 353.29 and 355.29 establish procedures for the Secretary to conduct inquiries to determine whether merchandise is included within the scope of an existing antidumping or countervailing duty finding or order. The procedures apply to all scope determinations, including those under section 781 of the Act. In applying these procedures to scope determinations other than those under section 781, {Commerce} is codifying existing practice.'').

a distinction between scope language which is ''unambiguous'' and therefore does not require ''clarification'' under the section 351.225 procedures, and scope language which is ''ambiguous'' and does require such ''clarification.'' In practice, the procedures under section 351.225 are intended to cover a wide variety of scope questions and are not intended to be restrictive to only those scenarios in which certain language in the scope requires ''clarification.'' Therefore, we have removed the term ''clarify'' from proposed paragraph (a). Additionally, proposed paragraph (a) explains that a scope ruling that a product is within the scope of the order is a determination that the product has *always* been within the scope of the order. As explained further below in the discussion of proposed section 351.225(l), the fact that an importer did not declare merchandise as subject to an AD and/or CVD order for a period of time before Commerce issued a scope ruling finding that such merchandise was covered does not justify treating entries that preceded that scope ruling as non-subject merchandise. Accordingly, scope rulings will be applied to all unliquidated entries of subject merchandise, as discussed further below.

Furthermore, the procedures under section 351.225 are not intended to be the only means by which Commerce may address scope questions that arise in its proceedings. The language in paragraph (b) in the current version of section 351.225, which states that Commerce ''will'' initiate a scope inquiry if certain information is available, also has raised questions about the agency's authority to address scope questions outside the section 351.225 procedures. For example, Commerce has the existing authority to address scope issues in the context of another segment of the proceeding under the AD and/or CVD order, such as an administrative review or circumvention inquiry. Over time, there have been questions about Commerce's discretion to self-initiate a scope inquiry under the current regulation when an interested party raises the possibility that its product is not covered by an order during the course of an administrative review under section 751(a) of the Act. Commerce has always argued that it has such authority under current laws and regulations. This issue would be addressed by revised paragraphs (b) and (i). In particular, revised paragraph (b) would clarify that Commerce ''may'' self-initiate a scope inquiry, if it believes such initiation is warranted; revised paragraph (i)(1) would allow Commerce to address scope questions in another segment of the proceeding, such as an administrative review under section 351.213, a circumvention inquiry under new section 351.226, or a covered merchandise referral under new section 351.227, without separately having to initiate a scope inquiry under section 351.225. To be clear, Commerce would retain discretion to determine if self-initiation is warranted under section 351.225(b) or to address scope questions outside the context of a scope inquiry. Moreover, the onus would remain on parties who wish to raise scope questions in another segment of a proceeding, such as an administrative review under section 351.213, to provide Commerce with the relevant information needed to address such matters (*i.e.,* by submitting a scope application and supporting information as provided in paragraph (c)).

Paragraph (c) addresses the information needed for interested parties [38] to file a scope ruling application. Domestic industries, foreign exporters, foreign producers, importers, and those considering exporting or importing merchandise to the United States all have different interests in Commerce making scope rulings on particular merchandise. This paragraph proposes certain amendments to address specific concerns which Commerce has identified with the current scope inquiry process. One concern is that scope ruling requests do not always include the requisite sufficient description and supporting information necessary for Commerce to complete an analysis. This has resulted in Commerce issuing numerous requests for further clarification and supporting evidence, which have further delayed its proceedings. Commerce has determined that one way to make this less pervasive is to require parties to fill out and file a standardized scope ruling application which would be available to parties on Commerce's website. Revised paragraph (c)(2) would list the information required which should be contained in the scope ruling application. It is understood that interested parties requesting a scope ruling may not have access to all of the information that would be requested. For example, a domestic interested party seeking a scope ruling on a product will not be likely to provide the narrative history of the production of the product at issue, including a history of earlier versions of the product, if this is not the first model of the product. For this reason, the regulation would require that the requested information in the scope ruling application be provided to the extent reasonably available to the requestor. The applicant would have to explain the reason it does not have certain requested information when filling out the scope ruling application, and Commerce would retain the ability to both ask supplemental questions about those explanations if necessary, as well as reject a scope ruling application if the information and explanations provided are insufficient.

The use of the term ''particular product'' in the current text of paragraphs (a) and (c) of section 351.225 has also generated questions over time. In practice, Commerce issues scope rulings, which generally apply to a particular interested party's product, relying on the description provided by the interested party. Sometimes the description of the product does not lend itself to a broader ruling that applies to all similar products (for instance, the description of the product is specific to a party's specific description, product number, contract, packaging, or manufacturing process, etc.). To address these concerns, proposed revisions to paragraph (c)(2)(ii) would require parties submitting scope ruling applications to provide a concise public description of the product at issue. It is Commerce's intent that the description used throughout the scope inquiry and in the final scope ruling will reflect the ''particular product'' at issue—thereby enabling the public and CBP to more easily identify the product at issue.

Proposed revisions to paragraph (c)(2)(v) would also mandate that, in requesting a scope ruling on merchandise which has already been imported into the United States as of the filing of the scope ruling application, to the extent reasonably available, an applicant must provide a statement as to whether an entry of the product has been classified as subject to an AD/CVD order by the filer or reclassified as

[38] The term ''interested party'' is defined in section 771(9) of the Act, and pertains, for example, to ''foreign manufacturers,'' ''producers,'' ''exporters,'' or ''United States importers'' ''of subject merchandise.'' However, the nature of a scope ruling is to determine whether the merchandise produced, imported by, or exported by a party is ''subject'' to an AD or CVD order. Thus, in many cases, the question of whether a party is an ''interested party'' is tied to the question of whether the merchandise at issue is determined to be subject merchandise or not. Accordingly, for purposes of these scope regulations, reference to the term ''interested party'' includes a party that potentially meets the definition of ''interested party'' under section 771(9) of the Act, depending upon the outcome of the scope inquiry. This clarification of the term ''interested party'' for purposes of this regulation is in no way intended to negate the requirement that the product is, or has been, in actual production as of the filing of the scope ruling application, as discussed below.

subject to an AD/CVD order by CBP along with documentation, including print-outs of the CBP ACE entry summary information, identifying the product upon importation and other related commercial documents.

Additionally, proposed paragraph (c)(1) provides that the applicant must demonstrate that the product is or has been in actual production as of the filing of the scope ruling application.[39] It is Commerce's expectation that a party will be able to satisfy this requirement by providing the requisite information under proposed paragraphs (c)(2)(iii), concerning a narrative of the production history, and (c)(2)(iv), concerning the volume of annual production of the product for the most recently completed fiscal year.

Another procedural matter that has arisen is a party's reference to prior agency scope rulings and determinations in scope requests without the placement of those scope rulings, or the full source document, on the record of the segment of the administrative proceeding. Those determinations, along with any other relevant source document supporting the party's position, such as the petition or relevant documents from the underlying investigation, must be placed on the record for Commerce to be able to consider them as part of its analysis. Accordingly, paragraph (c)(2)(viii) would also require that full copies of relevant prior determinations by the Secretary (including scope rulings) and relevant excerpts of other documents identified in paragraph (k)(1) be placed on the administrative record if cited by an applicant for support of its arguments.

Additional changes under paragraphs (c), (d), and (e) deal with the distinction between an informal scope ruling procedure and a formal scope inquiry procedure. In the context of its scope ruling practice, there is a 45-day deadline for Commerce to either (A) issue a scope ruling based upon the scope ruling application and descriptions of the merchandise listed under paragraph (k)(1) pursuant to current paragraphs (c)(2) and (d), or (B) initiate a formal inquiry pursuant to current paragraph (e), which Commerce adopted in the 1997 rulemaking.[40] This was initially intended to streamline the process and expedite review of certain, less complex scope issues, but in Commerce's experience this has not been the case. Instead, it has led to unnecessary delay and questions on the part of outside parties. For example, in this 45-day window, Commerce often solicits and receives new factual information and comments from numerous parties, leaving little time to consider the evidence and argument, and reach a well-reasoned decision within the time allotted. Frequently, Commerce must extend this deadline at least once before ultimately determining to formally initiate a scope inquiry (at which point, a new round of comments is triggered pursuant to paragraph (f), further delaying Commerce's decision). This has also led to questions from parties as to whether a decision to formally initiate a scope inquiry is a reflection of the difficulty of the issue, thus warranting analysis of the additional factors under paragraph (k)(2). Instead, a decision to formally initiate is often the result of the limited window in which Commerce has to consider the evidence and comments and reach a well-reasoned decision, even where the issue itself is neither complex nor controversial.

Thus, one change in these proposed regulations is that there would no longer be a distinction between an informal scope ruling procedure and a formal scope inquiry procedure, as the distinction between those two procedures sometimes causes confusion and adds unnecessary delay to the proceedings. Proposed paragraph (d), once a scope ruling application has been filed and appropriately served on all necessary parties, would allow Commerce 30 days to determine whether to accept or reject the scope ruling application. If Commerce determines that the scope ruling application is deficient or otherwise unacceptable, Commerce could reject it with an explanation. The applicant may correct the problems and refile the scope ruling application, restarting the regulatory deadlines. On the other hand, if Commerce does not reject the scope ruling application, then after 31 days, a scope inquiry would be deemed initiated. At that point, Commerce cannot reject the scope ruling application for deficiencies, but could demand supplemental information if necessary.

On a related matter, revised section 351.225 would provide that all scope rulings be issued pursuant to a scope inquiry consistent with this regulatory provision, with certain exceptions. For example, Commerce recognizes that there may be instances in which Commerce has already expressly considered the product at issue, and thus a new scope inquiry is not necessary to address the issue. In such instances, new paragraph (m)(1) discussed below would allow for Commerce to notify parties that it is applying a prior scope ruling to products with the identical physical description from the same country of origin. It is Commerce's intent that this notification would serve in place of a final scope ruling under new paragraph (h), but the requirements of paragraph (h) would still apply. As another example, as noted above and discussed further below, under proposed paragraph (i), Commerce would be able to address scope questions in the context of another segment of the proceeding, as a means of preserving departmental resources. Additionally, under revised paragraph (f)(6) discussed below, Commerce would be able to rescind a scope inquiry under appropriate circumstances.

Proposed revisions to paragraph (e) would provide new deadlines for scope inquiries. The current provision indicates that informal scope rulings based upon the application under the current version of § 351.225(d) would be completed within 45 days of receipt of a scope ruling application. But years of experience have shown Commerce that this is a difficult and frequently unworkable deadline, for the reasons discussed above. Accordingly, the proposed deadlines are timed off the initiation of the scope inquiry, with most scope inquiries being completed within 120 days (which is consistent with current paragraph (f)(5) of § 351.225). If good cause exists, however, such as the need for further information on the record, or the issuance of a preliminary scope ruling, Commerce would have the authority under proposed paragraph (e)(2) to extend the deadline an additional 180 days, up to 300 days—similar to the deadlines allowed for circumvention inquiries under section 781(f) of the Act.

Proposed revisions to paragraph (f) would clarify certain procedures for scope inquiries. As an initial matter, as noted above, proposed paragraph (a) explains that, unless otherwise specified in proposed section 351.225, Commerce's existing procedures

[39] *See Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634, 3639 (January 22, 2008) (''{Commerce's} practice is to issue a scope ruling or conduct a scope inquiry when the party requesting the ruling can show that the specific product in question is actually in production. The product need not be imported into the United States so long as the requestor can show evidence that the product is in production. {Commerce} will not issue a scope ruling or conduct a scope inquiry on a purely hypothetical product.'').

[40] *See 1996 Proposed Rule,* 61 FR at 7321–22; *1997 Final Rule,* 62 FR at 27327–30. These procedures clarified Commerce's existing practice as codified in sections 353.29 and 355.29, adopted in the 1990 rulemaking. *See 1990 Interim Final Rule,* 55 FR at 9046.

contained in subpart C apply to scope inquiries. Proposed paragraph (f) therefore identifies procedures which otherwise deviate from subpart C, including the deadlines for parties to comment and submit new factual information regarding Commerce's self-initiation of a scope inquiry under paragraph (b) and a scope ruling application. These deadlines would generally maintain the deadlines of current paragraph (f) (*i.e.,* 20/10 day comment/rebuttal periods). Additionally, proposed paragraph (f) would maintain Commerce's ability to issue questionnaires and conduct verifications, as appropriate, as well as its discretion to limit the number of respondents in a scope inquiry, if warranted. However, proposed paragraph (f)(4) would also establish deadlines regarding comments and rebuttal comments after a preliminary scope ruling under proposed paragraph (g) if the preliminary scope ruling is not issued concurrently with the initiation of the scope inquiry. These deadlines would be reduced from 20 to 10 days and 10 to 5 days, respectively.

Proposed paragraph (f)(5) would provide Commerce with the ability to establish alternative procedures if the preliminary scope ruling issued under proposed paragraph (g) is issued concurrently with the initiation of the scope inquiry.[41] Additionally, proposed paragraph (f)(6) would allow Commerce to maintain the discretion to rescind a scope inquiry, as appropriate. Commerce intends to exercise this discretion as a means of preserving departmental resources, for example, in instances in which a scope matter may be better addressed in another segment of a proceeding (*see* revised paragraph (i)(1)) or instances in which a new scope inquiry or scope ruling is unnecessary because of a related or prior scope ruling (*see* revised paragraph (m)). In addition, Commerce may rescind a scope inquiry, for example, if an interested party has failed to provide information necessary for Commerce to issue a scope ruling.[42] Finally, proposed paragraph (f)(7) would continue to provide Commerce with the discretion to consider extension requests and alter the comment deadlines during the scope inquiry, as appropriate.

Proposed revisions to paragraph (g) address the potential issuance of a preliminary scope ruling and mostly tracks paragraph (f)(3) of the current regulation, with some exceptions. Under current paragraph (f)(3), whenever Commerce determines that a scope inquiry presents an issue of significant difficulty, Commerce will issue a preliminary scope ruling, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product is covered by the scope. Under proposed paragraph (g), Commerce would, pursuant to the same ''reasonable basis to believe or suspect'' standard, maintain the discretion to issue a preliminary scope ruling, but Commerce need not consider whether the inquiry presents an issue of significant difficulty. Similar to existing paragraph (g), proposed paragraph (g) would allow Commerce to issue a preliminary scope ruling, based on available information at the time, as to whether there is a reasonable basis to believe or suspect that the product is covered by the scope of the order. Further, proposed paragraph (g) would maintain Commerce's discretion to issue a preliminary scope ruling at the same time Commerce initiates a scope inquiry. This could be done, for example, if the scope question before Commerce previously has been addressed by Commerce, or Commerce finds the issue to be relatively straightforward. In determining whether to issue a preliminary scope ruling, Commerce may consider the complexity of the issues and the arguments raised by parties.

It is worth noting that, in accordance with proposed paragraph (n)(4), if Commerce issues a preliminary scope ruling, it would no longer be required to notify all parties on the scope service list of that preliminary ruling. Instead, only parties who are on the segment-specific public service list or the APO service list (*see* § 351.103(d)), as applicable, would receive notice of the preliminary scope ruling, as with any other document that is placed on the record by the agency, through Commerce's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) system.

Proposed revisions to paragraph (h) largely follow paragraph (f)(4) of the current regulation concerning the issuance of final scope rulings, with a few exceptions. Significantly, proposed paragraph (h) provides that Commerce would ''convey'' the final scope ruling in accordance with the requirements of section 516A(a)(2)(A)(ii) of the Act, which states that judicial review of ''class or kind'' determinations under section 516A(a)(2)(B)(vi) of the Act, such as scope rulings, are based off of the date of mailing of such determination. Section 516A(a)(2)(A)(ii) of the Act further provides that only ''an interested party who is a party to the proceeding'' may commence judicial review procedures. Therefore, Commerce proposes to convey the final scope ruling in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act to interested parties who are parties to the proceeding (*see* § 351.102(b)(36)), because these are the only parties that have legal standing to appeal the final scope ruling under section 516A(a)(2)(A)(ii) of the Act. However, as noted above, as with any other document that is placed on the record by the agency, all parties on the segment-specific service lists will be notified of the final scope ruling through Commerce's electronic ACCESS system.

Additionally, paragraph (h) states that Commerce will ''promptly'' convey the scope ruling to all parties to the proceeding. The use of this term is consistent with the use of the same term in new §§ 351.226 and 227. It is Commerce's expectation that prompt conveyance of the scope ruling normally would occur no more than 5 business days from the issuance of the final scope ruling. Consistent with sections 516A(a)(2)(A)(ii) and (B)(vi) of the Act, judicial review procedures would be commenced based on the date of conveyance, as opposed to the date of receipt, of a scope ruling.

As noted above, proposed paragraph (i) would clarify the interaction between scope inquiries and other segments of the proceeding and would replace paragraphs (f)(6) and (l)(4). These revisions acknowledge Commerce's discretion to determine after reviewing all of the information on the record, on a case-by-case basis, the most efficient means of addressing a scope question in an effort to preserve departmental resources. For example, Commerce would be able to address scope questions in another segment of a proceeding, such as an administrative review under § 351.213, a circumvention inquiry under new § 351.226, or a covered merchandise inquiry under new § 351.227, without invoking the § 351.225 procedures; conduct a scope inquiry under § 351.225 in addition to another segment of the proceeding; or align the deadlines, maintaining them as separate segments of the proceeding. Further, under revised paragraph (i)(3), during the pendency of a scope inquiry or upon issuance of a final scope ruling, Commerce could consider the products

[41] To be clear, Commerce already has the authority under existing regulations to issue a preliminary scope ruling concurrently with initiation.

[42] Commerce also maintains the discretion to apply facts available pursuant to section 776 of the Act, as appropriate, rather than rescind a scope inquiry.

subject to the scope inquiry in an ongoing administrative review, as appropriate (*i.e.,* if sufficient time remains in the administrative review to collect and analyze such information), although it would not be required to do so.

Proposed revisions to paragraphs (j) and (k) address the substance of Commerce's scope ruling determinations. Aside from the description of the merchandise subject to the scope of an order, an essential element in determining whether a product is covered by an order is the country of origin of the product at issue. Therefore, proposed paragraph (j) would codify Commerce's longstanding ''substantial transformation'' test or analysis, which is used to determine the country of origin of a product or products.[43] In particular, Commerce generally uses a substantial transformation analysis to determine whether a product's country of origin has changed as a result of processing that occurs in third countries before a product is imported into the United States. The courts have upheld Commerce's substantial transformation analysis,[44] which has, in different iterations, looked at factors such as whether the processed downstream product is a different class or kind of merchandise than the upstream product; the technical, physical, and chemical characteristics of the product and its parts; the intended end-use of the product; the cost of production and value added to the product as a result of further processing in third countries; the nature and sophistication of processing in third countries; the level of investment in third countries; and where the essential component of the product is produced or where the essential characteristics of the product are imparted. In addition, Commerce has considered other relevant case-specific factors in applying its substantial transformation analysis when necessary.

Additionally, Commerce continues to recognize that, in addressing country of origin issues in the context of Commerce proceedings, Commerce is not bound by the country of origin determinations of other agencies, such as CBP.[45] While such determinations may be informative, when determining the scope of AD/CVD orders, Commerce's country of origin analysis is ultimately made independently and is based upon the information on the record of the proceeding.

Furthermore, if for some reason the substantial transformation test is not appropriate for purposes of determining the country of origin of a particular product, Commerce would continue to retain the ability to apply another reasonable test to determine the country of origin of a specific product. This would particularly be the case where '''rote application' of the substantial transformation test would be inadequate to remedy the unfair pricing decisions and/or unfair subsidization because it would exclude the very imports found to injure the domestic industry.'' [46]

Paragraph (k) of current § 351.225 describes the substantive basis for Commerce's scope rulings, and, as a result, has been the source of much litigation over the life of the regulation. Although the U.S. Court of International Trade (CIT) and the U.S. Court of Appeals for the Federal Circuit (CAFC) have generally recognized that Commerce has ''substantial freedom to interpret and clarify'' the scope of AD/CVD orders through scope rulings,[47] the Courts have held that Commerce's scope rulings must still be issued in accordance with the requirements of its scope ruling regulations, and in particular, the sequence of factors to consider set forth in paragraph (k). In light of Commerce's years of experience drafting scope rulings, and numerous holdings of the CIT and CAFC addressing Commerce's scope determinations, Commerce is proposing that certain modifications be made to paragraph (k). As an initial matter, current paragraph (k) makes no specific reference to the scope language as the starting point for any scope analysis. However, the CAFC has added this initial step, sometimes referred to as a ''k(0)'' analysis.[48] Recently, the CAFC clarified the legal framework required of a scope ruling determination:

> First, the plain language of an antidumping order is paramount in determining whether particular products are included within its scope. If the scope is unambiguous, it governs. In reviewing the plain language of a duty order, Commerce must consider the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission. Second, if the above sources do not dispositively answer the question, Commerce may consider the (k)(2) factors.[49]

Accordingly, proposed paragraph (k) would codify this judicially created and affirmed framework, explaining that the primary analysis in any scope inquiry is the language of the scope itself. Revised paragraph (k) also explains that Commerce may issue its scope ruling on this basis alone if the language of the scope, including the descriptions of merchandise expressly excluded from the scope, and the language of the scope as a whole, is dispositive. Furthermore, in light of our experience and prior court holdings, proposed paragraph (k)(1) indicates that, in considering the plain language of the scope, Commerce, at its discretion, could also consider the underlying petition, Commerce's investigation, prior Commerce determinations (including but not limited to prior scope rulings,[50] memoranda, or clarifications),[51] and

[43] *See Bell Supply Company, LLC* v. *United States,* 888 F.3d 1222, 1228–29 (Fed. Cir. 2018) (''A substantial transformation occurs where, 'as a result of manufacturing or processing steps . . . {,} the {product} loses its identity and is transformed into a new product having a new name, character and use.' '') (internal citations omitted).

[44] *See E.I. DuPont de Nemours & Co.* v. *United States,* 8 F. Supp. 2d 854, 858 (CIT 1998) (''The 'substantial transformation' rule provides a yardstick for determining whether the processes performed on merchandise in a country are of such significance as to require the resulting merchandise to be considered the product of the country in which the transformation occurred.'').

[45] While the ''Department may consider the decisions of Customs, it is not obligated to follow, nor is it bound by, the classification determinations of Customs. . . .'' *Wirth Ltd.* v. *United States,* 5 F. Supp. 2d 968, 973 (CIT 1998) (''Commerce, not Customs, has authority to clarify the scope of AD/CVD orders and findings.'').

[46] *See Canadian Solar,* 918 F.3d at 919.

[47] *Duferco Steel, Inc.* v. *United States,* 296 F.3d 1087, 1096 (Fed. Cir. 2002) (quotation marks and citations omitted).

[48] *See Meridian Prods., LLC* v. *United States,* 851 F.3d 1375, 1381 (Fed. Cir. 2017) (''No specific statutory provision governs the interpretation of the scope of antidumping or countervailing orders. Commerce has filled the statutory gap with a regulation that sets forth a two-step test for answering scope questions, 19 CFR 351.225(k), and our case law has added another layer to the inquiry.'') (internal citations and punctuation omitted).

[49] *Meridian Prods., LLC* v. *United States,* 890 F.3d 1272, 1277–78 (Fed. Cir. 2018) (*Meridian*) (internal citations and punctuation omitted).

[50] This is not limited to Commerce's scope rulings within the same order, and Commerce may consider its analysis of the same or similar scope language used in other orders.

[51] Scope clarifications are not defined in the statute or regulation. Scope clarifications are sometimes issued during an ongoing investigation if arguments or information pertaining to the scope of an investigation comes to Commerce's attention following the issuance of a scope memorandum and Commerce determines that it is necessary to place a clarification on the administrative record to address those scope claims. Scope clarifications also may be issued after an AD/CVD order has been in place for a period of time and Commerce has found that multiple parties have requested scope rulings over and over covering the same or similar scope language. In that situation, Commerce may issue a scope clarification addressing that particular scope language, and then further memorialize that clarification in the form of an interpretive footnote to the scope of the order. Following the issuance of a scope clarification in that context, the interpretive footnote will normally accompany the text of the scope itself when it is published in Commerce's administrative determinations and instructions to CBP. The procedures and timetables set forth in these regulations covering scope

determinations of the ITC. In addition to the (k)(1) sources, Commerce could also consider traditional interpretive tools, such as a dictionary and industry usage of a particular word or phrase, or other record evidence, to provide context and understanding in considering the plain language of the scope. However, in the event of a conflict between these interpretive tools or other record evidence and the sources identified in paragraph (k)(1), Commerce would adopt the interpretation supported by the (k)(1) sources.[52]

Proposed revisions to paragraph (k)(2) would maintain that if, based on the scope language and the factors enumerated above, Commerce is unable to determine whether a product is covered by a scope, then Commerce would consider the listed five additional factors.[53] These factors are largely consistent with current paragraph (k)(2), with some minor clarifications. It is Commerce's intent that the first factor—the characteristics of the product, including the technical, physical, or chemical characteristics of the product—may be given greater weight than the other individual factors. Nonetheless, Commerce should consider each of the factors in making its determination under paragraph (k)(2).

Finally, proposed paragraph (k)(3) would codify and clarify Commerce's analysis for certain products, colloquially referred to as ''mixed media'' products (*i.e.,* subject merchandise assembled or packaged with non-subject merchandise), which has been recognized by the courts.[54] In some instances, the scope language of an order may clearly address these types of products.[55] In such cases, a ''mixed-media'' analysis may not be necessary. However, because scope language is written in general terms, the language itself may not contemplate assembled or packaged items that contain subject merchandise as a component. Therefore, in conducting a scope inquiry, Commerce may need to conduct a ''mixed-media'' analysis to determine whether a combination of products or a component thereof constitutes subject merchandise. Under such situations, in accordance with Commerce's practice and proposed paragraph (k)(3), Commerce could first determine whether the component product, if separated from the other component products, would be considered covered by the scope. If the determination is that the product would be covered by the scope, then Commerce would conduct a further analysis and determine if the product is nonetheless excluded from the scope through its inclusion in the combined product. To determine if the product is covered or excluded from the scope of the order, Commerce would consider the practicability of separating the in-scope component for repackaging or resale, the measurable value of the in-scope component as compared to the measurable value of the merchandise as a whole, and the ultimate use or function of the in-scope component relative to the ultimate use or function of the merchandise as a whole. If Commerce determines that the component product at issue is covered by the scope of an order, but the other components of the larger merchandise are not covered by the scope of an order, the value of the in-scope subject component should be reported to CBP for AD/CVD purposes in accordance with CBP's reporting requirements.

Paragraph (l) of the current regulation, governing the suspension of liquidation and requirement of cash deposits for entries affected by Commerce's scope rulings, also has been the source of varying interpretations and litigation and requires revision.

As an initial matter, as discussed above, AD and CVD orders provide the legal basis for the suspension of liquidation of importations of subject merchandise that enter for consumption on or after the date of publication of that order, throughout the life of the order, and until the order is revoked.[56] Further, the publication in the **Federal Register** of Commerce's preliminary and final investigation determinations, as well as the publication of the resulting orders, serve as notice to producers, exporters, and importers that their merchandise might be covered by those investigations and/or orders, and, therefore, it is incumbent upon the importing parties to (1) declare the status of their merchandise truthfully to CBP upon entry, or (2) seek a scope ruling from Commerce if there is a question as to whether the merchandise is covered by an AD and/or CVD order. As discussed above for proposed paragraph (a), a scope ruling that a product is within the scope of the order is a determination that the product has *always* been within the scope of the order, and Commerce's scope regulations must reflect that determination. Put another way, if a party has imported merchandise and declared that merchandise as not covered by the scope of an order, and then Commerce issues a scope ruling finding that such merchandise is subject to an order, under these proposed regulations Commerce's scope ruling would apply to all unliquidated entries of the merchandise, as discussed below. Importing parties are already notified through the publication in the **Federal Register** of Commerce's determinations and/or order, and, therefore, cannot claim ignorance or reliance on another agency's determinations or actions to avoid the application of Commerce's scope ruling to their merchandise. Commerce proposes to amend paragraph (l) as necessary in light of these considerations.

Additionally, current paragraph (l) reflects the distinction between a formal scope inquiry as provided under current paragraphs (b), (e), and (f) and a final scope ruling based on the application under current paragraph (d) (also referred to as an informal scope inquiry). Although current paragraph (l) expressly addresses suspension of liquidation and requirement of cash deposits under the first procedure, it is largely silent with respect to scope rulings based on the application—and this silence has been the source of some confusion and litigation. As discussed above, we are proposing to eliminate the distinction between these two procedures, and, with these proposed changes, we are proposing to adapt the current structure of paragraph (l)

inquiries and scope rulings do not apply to scope clarifications, nor do they inhibit Commerce's ability or discretion to issue such scope clarifications.

[52] *See Meridian,* 890 F.3d at 1280–81 (overruling a CIT decision that adopted the common and commercial meaning and dictionary definition of a scope term over Commerce's interpretation in prior scope rulings).

[53] Those factors are sometimes referred to as the Diversified Products factors because they were first articulated in *Diversified Prods. Corp.* v. *United States,* 572 F. Supp. 883 (CIT 1983). *See Walgreen Co. of Deerfield, IL* v. *United States,* 620 F.3d 1350, 1355 & n.2 (Fed. Cir. 2010) (*Walgreen*).

[54] *See Mid Continent Nail Corporation* v. *United States,* 725 F.3d 1295, 1302–04 (Fed. Cir. 2013) (*Mid Continent Nail*) (referencing the ''mixed-media'' analysis); *Walgreen,* 620 F.3d at 1355–57 (same).

[55] *See, e.g., Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650, 30651 (May 26, 2011) (''The scope includes the aluminum extrusion components that are attached (*e.g.,* by welding or fasteners) to form subassemblies, *i.e.,* partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.''); *Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Amended Antidumping Duty Orders,* 75 FR 56982, 56983 (September 17, 2010) (''Narrow woven ribbons subject to the orders may. . . be included within a kit or set such as when packaged with other products, including but not limited to gift bags, gift boxes and/or other types of ribbon.'').

[56] *See Ugine & ALZ Belgium* v. *United States,* 551 F.3d 1339, 1340–43 (Fed. Cir. 2009); *Am. Power Pull Corp.* v. *United States,* 121 F. Supp. 3d 1296, 1300–02 (CIT 2015).

accordingly to reflect a single scope inquiry procedure. That is, all scope rulings would be subject to the same procedures under revised paragraph (l), and there will no longer be any distinction between formal and informal scope inquiries (as discussed above).

Revised paragraph (l)(1) provides that when Commerce initiates a scope inquiry under proposed paragraphs (b) or (d), it will notify CBP of the initiation and direct CBP to continue the suspension of liquidation of all unliquidated entries of products subject to the scope inquiry that are already subject to the suspension of liquidation,[57] until appropriate liquidation instructions are issued.[58] Further, Commerce will direct CBP to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order. These revisions are consistent with current paragraph (l)(1) to the extent that both call for the suspension of liquidation and application of cash deposits for already-suspended entries to continue after initiation of a formal scope inquiry.

However, this also deviates from current paragraphs (l)(1) and (2), which provide that when Commerce issues a preliminary scope ruling finding the product is not covered by the scope of the AD and/or CVD order (*i.e.,* a ''negative'' scope ruling), it will instruct CBP to terminate suspension of liquidation and refund all cash deposits for already-suspended entries.

Notably, revised paragraph (l)(2) (pertaining to preliminary scope rulings) does not require Commerce to notify CBP of a negative preliminary scope ruling. In such instances, suspension of liquidation and application of cash deposits for already suspended entries (if any) under revised paragraph (l)(1) will remain in effect pending Commerce's subsequent issuance of a final scope ruling and appropriate instructions as described in revised paragraphs (l)(3) or (4). Thus, any suspension of liquidation prior to the negative preliminary scope ruling will remain in effect until the conclusion of the scope inquiry to ensure appropriate application of AD/CVD duties in the event of a final scope ruling finding the product is covered by the scope of the AD and/or CVD order (*i.e.,* an ''affirmative'' scope ruling). Further, under revised paragraph (l)(4), if Commerce issues a negative final scope ruling that the product is not covered by an order, and the product is not otherwise subject to suspension as a result of another segment of a proceeding, such as a circumvention inquiry under § 351.226 or a covered merchandise inquiry under § 351.227, for merchandise that was suspended and for which cash deposit rates were paid, Commerce would instruct CBP to terminate suspension of liquidation and refund cash deposits (if any) on entries of this non-subject merchandise.

Paragraphs (l)(2) and (3) also have been revised to address the considerations highlighted above, specifically, to ensure that the results of affirmative scope rulings are appropriately applied to all entries of subject merchandise, which should be covered by those rulings. Therefore, under revised paragraphs (l)(2) and (3), at the time of the first affirmative scope ruling (preliminary or final), Commerce will direct CBP to suspend liquidation of all unliquidated entries of products subject to the scope inquiry that are not already subject to the suspension of liquidation (and continue suspension of liquidation for any entries already suspended as provided under revised paragraph (l)(1)). This action would apply to all such entries dating back to the earliest suspension date under the order, which is normally the preliminary determination in the underlying investigation. Further, Commerce will direct CBP to apply the applicable cash deposit rate to all such entries. As provided under revised paragraphs (l)(2) and (3), these instructions will remain in place until appropriate liquidation instructions are issued pursuant to §§ 351.212 and 351.213.[59]

This deviates from current paragraph (l) in certain respects. As stated above, current paragraph (l) expressly addresses suspension of liquidation and requirement of cash deposits for entries in a formal scope inquiry, but is less clear when Commerce issues a final scope ruling based upon the application in an informal scope inquiry. For instance, current paragraphs (l)(2) and (3) provide that if Commerce issues an affirmative preliminary or final scope ruling pursuant to a formal scope inquiry, then ''any suspension of liquidation'' will continue. Where there has been no previous suspension of liquidation, Commerce will direct CBP (in the event of an affirmative preliminary or final scope ruling) to suspend liquidation of unliquidated entries dating back to the date of initiation of the scope inquiry.

Current paragraph (l)(3) also provides that if Commerce issues an affirmative final scope ruling based on the application, then ''any suspension of liquidation'' will continue. However, paragraph (l) does not expressly address instances in which Commerce issues an affirmative final scope ruling based upon the application (and thus, there has been no initiation of the scope inquiry) and entries have not already been suspended. Therefore, in such instances Commerce may direct CBP to suspend liquidation of all unliquidated entries subject to the scope inquiry not already subject to the suspension of liquidation (and continue suspension of liquidation for any entries already suspended), and apply the applicable cash deposit rates to such entries. This action applies to all such entries dating back to the earliest suspension date

[57] Entries may be already subject to the suspension of liquidation under a variety of scenarios. As recently affirmed by the CAFC and as discussed in more detail above, CBP has independent authority to suspend liquidation of entries that CBP determines are within the scope of an AD or CVD order; such determinations are ''final and conclusive'' unless appealed to Commerce through a request for a scope ruling. *See Sunpreme III,* 946 F.3d at 1317–18. Additionally, section 517 of the Act (concerning CBP's civil administrative investigations of duty evasion of AD/CVD orders) authorizes CBP to suspend liquidation of entries for which it has reasonable suspicion, or, in the case of final determination, substantial evidence, that covered merchandise is entered into the United States through evasion under section 517(e) and (d) of the Act.

[58] At the time Commerce initiates a scope inquiry, there may be entries of products subject to the scope inquiry that CBP has liquidated but for which liquidation is not yet final (*e.g.,* entries under protest pursuant to 19 U.S.C. 1514). Consistent with current practice and in accordance with CBP's statutory and regulatory authorities, Commerce expects that CBP may stay its action on these entries pending the outcome of the scope inquiry. This is consistent with the CAFC's decision in *Thyssenkrupp Steel North America, Inc.* v. *United States,* 886 F.3d 1215 (Fed. Cir. 2018). In *Thyssenkrupp,* the CAFC recognized that instructions revoking an antidumping duty order superseded previously issued liquidation instructions, as of the effective date of the revocation, and applied to entries under protest that entered the United States after the effective date of the revocation. *Id.* at 1223–27. The CAFC explained that this ''serves the purpose of the protest mechanism—to allow agency consideration of issues after an initial liquidation determination—and respects the longstanding principle . . . that newly governing law, if retroactive to particular events, is to be applied to those events in ordinary, timely initiated direct-review proceedings.'' *Id.* at 1224. A similar point was recognized in *TR International,* Slip Op. 20–34 at *11, currently on appeal, concerning CBP's potential application of a Commerce scope ruling to entries under protest.

[59] As discussed above, consistent with current practice and in accordance with CBP's statutory and regulatory authorities, CBP may stay its action on entries of products that CBP has liquidated but for which liquidation is not yet final pending the outcome of a scope inquiry. Additionally, any instructions issued by Commerce directing CBP to ''lift suspension of liquidation'' and assess duties at the applicable AD/CVD rate would not limit CBP's ability to (1) suspend liquidation/assess duties/take any other measures pursuant to CBP's EAPA investigation authority under section 517 of the Act specifically, or (2) take any other action within CBP's or HSI's authority with respect to AD/CVD entries.

under the order, which is normally the preliminary determination in the underlying investigation.

In short, under the current regulatory framework, Commerce has employed two distinct approaches for suspension of liquidation and application of cash deposits reflecting the different procedures for informal and formal scope inquiries. As Commerce proposes to eliminate the distinction between these different procedures, and, in light of the considerations highlighted above, revised paragraph (l) largely mirrors the approach for informal scope inquiries discussed above. Specifically, as stated above, the proposed action under paragraphs (l)(2) and (3) would apply to all unliquidated entries dating back to the earliest suspension date under the order, which is normally the preliminary determination in the underlying investigation, as opposed to the date of initiation of the scope inquiry (*i.e.,* the approach currently taken in formal scope inquiries).

The reason that Commerce is proposing to take this approach to suspension of liquidation and application of cash deposits is to prevent a situation which, in the terms of the CAFC, ''would encourage gamesmanship by importers'' and ''permit importers to potentially avoid paying duties. . . .'' [60] Under the proposed approach, importers have an incentive to seek a determination as soon as possible whether a particular product is subject to the scope of an existing AD/CVD order. If they fail to do so, then they may be liable for AD/CVD duties if Commerce eventually determines that the products are covered by the scope of an existing AD/CVD order. By contrast, the alternative approach (*i.e.,* the approach currently taken in rulings based on a formal scope inquiry) would encourage gamesmanship, delay, and indeed, duty evasion. Foreign producers and exporters, as well as U.S. importers, would understand that all entries not already suspended prior to the date on which Commerce initiates a scope inquiry are essentially excused from AD/CVD duties, even if Commerce finds through the scope inquiry that such duties should have applied. In turn, this would lead parties to import as much as possible before any request for a scope inquiry is filed, and then eliminate AD/CVD duty liability for such imports by requesting a scope inquiry. Such manipulation of AD/CVD duty liability would undermine the effectiveness and remedial purpose of the AD/CVD laws. Accordingly, Commerce proposes to adopt the procedures discussed above.

We recognize that the CAFC recently held that Commerce's current regulations did not allow for ''retroactively suspending liquidation to the issuance date'' of the antidumping order in that litigation, where Commerce issued a final scope ruling based on the application in an informal scope inquiry.[61] However, the CAFC relied on the existing regulatory framework that delineates between an informal and formal scope inquiry described above, and that Commerce is now proposing to change in this proposed rule.[62] Therefore, notwithstanding the CAFC's holding in *Fasteners,* Commerce is not precluded from amending its regulations through notice and comment procedures to adopt the procedures discussed herein.

Additionally, to the extent the CAFC relied on concerns in the *1997 Final Rule* regarding potential retroactive suspension of liquidation,[63] those concerns pertained to the inconvenience to importers and exporters if domestic industries filed a scope request based ''on nothing more'' than a mere ''allegation'' and Commerce began suspension of liquidation on entries not already subject to suspension of liquidation.[64] This was in response to a suggestion that, at the time Commerce initiates a formal scope inquiry based on a scope request, Commerce should instruct CBP to suspend liquidation of any unliquidated entries.[65] However, Commerce's proposed regulation does not adopt such a position. Rather, Commerce proposes that only upon issuance of an affirmative preliminary or final scope ruling will Commerce direct that any unliquidated entries under the order (dating back to the earliest suspension date under the order) be suspended. This proposal is consistent with the *1997 Final Rule* statement that ''the Department will not order the suspension of liquidation until it makes either a preliminary or final affirmative scope ruling, whichever occurs first.'' [66] The difference is that the *1997 Final Rule* as promulgated in the current regulation imposes a ''cut-off'' of the initiation date of the scope inquiry—the proposed regulation removes this limitation so that any unliquidated entries found within the scope of the order appropriately will be subject to duties, not just those that entered after the initiation date.[67]

This exercise of Commerce's discretion is reasonable and balanced. As explained above, Congress, and the courts, have long recognized that Commerce has the vested authority to administer the trade remedy laws in accordance with their intent, and has the discretion to take appropriate enforcement measures to ensure the effectiveness of its AD/CVD orders by preventing duty evasion and circumvention.[68] Further, over the last twenty years, the United States has faced various complications in fully collecting AD and CVD duties from the obligated parties.[69] Although Commerce is cognizant of the concerns raised in the *1997 Final Rule* regarding the risk of potential unfairness to certain importers who genuinely may not be aware that their products are within the scope of an order until Commerce issues a ruling, Commerce cannot distinguish between importers with a genuine misunderstanding from those who (1) have failed to do their due diligence by reviewing Commerce scope descriptions or past scope rulings, or (2) are aware of their potential (or actual) AD/CVD liability and have opted not to seek a scope ruling or enter their merchandise as subject to an AD/CVD order, so as to avoid the likely application of AD/CVD duties. On balance, Commerce has determined that the very real risk and concerns of duty evasion, circumvention, and duty collection should guide its updated regulations.

Commerce also has considered the practical effect this change in policy may have on importers' liability. Significantly, the statute generally directs CBP to liquidate entries which have not been declared as subject to an AD/CVD order within one year of entry.[70] Therefore, practically speaking, it is unlikely that once Commerce issues

[60] *Sunpreme III,* 946 F.3d at 1317 and 1321. In *United Steel and Fasteners, Inc.* v. *United States,* 947 F.3d 794 (Fed. Cir. 2020) (*Fasteners*), discussed further below, the CAFC did not disagree with Commerce's concerns of potential ''gamesmanship and delay'' if importers did not report their merchandise to CBP as subject merchandise. *See Fasteners,* 947 F.3d at 803 (finding narrowly that ''we do not find that such gamesmanship occurred in this case.'')

[61] *See Fasteners,* 947 F.3d at 800–03.

[62] *Id.*

[63] *Id.* at 802 (citing *1997 Final Rule,* 62 FR at 27327–38).

[64] *See 1997 Final Rule,* 62 FR at 27328.

[65] *Id.,* 62 FR at 27327–28.

[66] *Id.,* 62 FR at 27328.

[67] As discussed above, consistent with current practice and in accordance with CBP's statutory and regulatory authorities, CBP may stay its action on entries of products that CBP has liquidated but for which liquidation is not yet final pending the outcome of a scope inquiry.

[68] *See generally* section 781 of the Act; SAA at 892–95; *Tung Mung,* 219 F. Supp. 2d at 1343.

[69] *See, e.g.,* U.S. Gov't Accountability Office, Report to the Chairman, Committee on Finance, U.S. Senate, GAO 16–542, Antidumping and Countervailing Duties: CBP Action Needed to Reduce Duty Processing Errors and Mitigate Nonpayment Risk, at 13 (July 2016).

[70] 19 U.S.C. 1504(a); Section 504 of the Act.

a preliminary or final scope ruling finding a product covered by an AD/CVD order that there will be any unliquidated entries, other than those already suspended, more than a year old. In light of this, Commerce believes that it has settled on a policy which will effectuate its authority under the AD/CVD laws, while mitigating the harm to importers who may be acting in good faith by importing without paying duties. Moreover, should this change in policy be adopted in any final rule, the effective date of the policy change would be 30 days after publication of the final rule. Therefore, scope inquiries initiated prior to this effective date would maintain the initiation date of the inquiry as the furthest potential ''retroactive'' date for unliquidated entries not already suspended. That said, given that this proposal involves complex and technical issues, and given that important trade enforcement objectives are implicated, Commerce invites public comment on revised § 351.225(l). We will carefully consider all public comments before issuing a final rule that revises the existing regulation.

Proposed revisions to paragraph (m) address the application of scope rulings under two different scenarios. Paragraph (m)(1) would clarify that if a scope ruling application requests a scope ruling on a product, which is physically identical to that of another product for which a scope ruling has already been issued under the same order, Commerce could apply the previous scope ruling directly to the requested product without conducting a new scope inquiry. In that situation, for example, Commerce may issue a letter to the applicant and attach the scope ruling upon which it has relied, making its determination without the need of a larger, more detailed scope ruling. In such instances, the requirements for issuing a final scope ruling under paragraph (h) would apply.

Proposed paragraphs (m) and (n) together address a problem that arises when a scope ruling would apply equally to companion AD and CVD orders, which cover the same merchandise from the same country. In that scenario, an interested party submitting a scope ruling application pertaining to both orders pursuant to paragraph (c) must file its scope ruling application on the record of the AD proceeding only, and serve its scope ruling application to all parties on the annual inquiry service list for both the AD and CVD orders. The annual inquiry service list and related procedures are discussed in paragraph (n). Once Commerce initiates the scope inquiry, Commerce would initiate and conduct that inquiry pertaining to both orders only on the record of the AD proceeding.[71] This is because Commerce has noticed over the years that, in certain inquiries, interested parties have inadvertently placed relevant information, for example, on the AD proceeding record, but not on the CVD proceeding record, or vice-versa. Once Commerce issues a final scope ruling on the record of the AD proceeding, Commerce would include a copy of that scope ruling on the record of the CVD proceeding. By limiting the scope inquiry only to the record of one proceeding, the chances of incomplete records, or confusing records being filed with courts on appeal, should be lessened.

Proposed revisions to paragraph (n) addresses service requirements. The current regulations require that any party that has ever participated in proceedings under an order must be served with a scope request based on the scope service list maintained on Commerce's website. However, because some orders are decades old and the scope service list contains dozens of parties who have participated over the years, the proposed regulations would require that parties (other than the petitioner) who wish to be served with new scope ruling applications, under paragraph (c), or be notified of Commerce's self-initiation of a scope inquiry, under paragraph (b), would have to take the affirmative step of filing a request for inclusion on the annual inquiry service list. Requests for inclusion on the annual inquiry service list must be filed with Commerce during the anniversary month of the AD or CVD order at issue, and Commerce would update the list on an annual basis at that time.

In addition, under proposed paragraph (n), once a scope ruling application is accepted by Commerce in accordance with paragraph (d), and after Commerce has notified parties on the annual inquiry service list of its self-initiation of a scope inquiry under paragraph (b), a segment-specific service list would be established, under § 351.103(d)(1), and the requirements of § 351.303(f) would apply. To be clear, once the segment-specific service list is established, parties on the annual inquiry service list for all orders that may be affected by the scope ruling would no longer be served with filings made pursuant to the scope inquiry, unless they had followed the procedures of § 351.103(d)(1) by filing an entry of appearance in the relevant scope segment. However, as discussed further below, Commerce proposes to amend § 351.103(d)(1) to reflect that an interested party that submits a scope ruling application need not file an entry of appearance under § 351.103(d)(1), as that interested party would be placed on the segment-specific service list by Commerce.

Finally, proposed revisions to paragraphs (o) and (p) provide that Commerce would publish in the **Federal Register** on a quarterly basis a list of all of the final scope rulings issued within the previous three months and that scope rulings may, as appropriate, apply to suspension agreements as well, in accordance with § 351.208.

Circumvention—Section 351.226

When the current scope regulations were drafted, there was a belief that there were similarities between scope inquiries and circumvention inquiries sufficient to place them both in the same general regulatory provision. Circumvention inquiries (sometimes called anti-circumvention inquiries) are conducted pursuant to section 781 of the Act, while scope inquiries are referenced only in sections 516a(a)(2)(A)(ii) and 516a(a)(2)(B)(vi) of the Act. As the two latter provisions pertain to determinations by Commerce as to ''whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order,'' it is clear that Commerce derives its authority to conduct a scope ruling from multiple sources, including, for example, sections 771(25) (defining subject merchandise as a ''class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, (or) an order''), 701(a) (directing Commerce to impose duties on a class or kind of merchandise being subsidized), and 731(a) of the Act (directing Commerce to impose duties on a class or kind of merchandise being dumped).

Because there is unique authority for these different inquiries and corresponding determinations, and we conduct the two proceedings differently, we have determined that it is appropriate to establish separate regulations for each type of proceeding. With respect to circumvention inquiries in particular, paragraphs (h), (i), (j), and (k) of proposed new § 351.226 are derived directly from section 781 of the Act and current regulation §§ 351.225(g), (h), (i), and (j).

Proposed paragraph (a) introduces new § 351.226 and briefly addresses

[71] Commerce will follow the procedures of paragraph (l) for both orders.

section 781 of the Act. Congress enacted section 781 of the Act to combat certain forms of circumvention of AD and CVD orders. When Congress passed the Omnibus Trade and Competitiveness Act in 1988, it explained that ''{a}n order on an article presumptively includes articles altered in minor respects in form or appearance . . . .'' The legislative history explains that the purpose of the circumvention statute ''is to authorize the Commerce Department to apply AD and {CVD} orders in such a way as to prevent circumvention and diversion of U.S. law.'' [72] Further, it indicates that Congress was concerned with the existence of ''loopholes,'' *i.e.,* foreign companies evading orders by making slight changes in their method of production, because such scenarios ''seriously undermine the effectiveness of the remedies provided by the antidumping and countervailing duty proceedings, and frustrated the purposes for which these laws were enacted.'' [73] Congress also recognized that ''aggressive implementation of {the circumvention statute} by the Commerce Department can foreclose these practices.'' [74] When implementing the Uruguay Round Agreements Act of 1994, the Administration expressed similar concerns about scenarios limiting the effectiveness of the AD duty law (*i.e.,* completion or assembly in a country other than the subject country).[75] Accordingly, Commerce ''has been vested with authority to administer the antidumping laws in accordance with the legislative intent'' and, thus, ''has a certain amount of discretion {to act} . . . with the purpose in mind of preventing the intentional evasion or circumvention of the antidumping duty law.'' [76] Proposed paragraph (a), as well as additional paragraphs discussed below, would codify these principles. Additionally, proposed § 351.226(a) tracks proposed § 351.225(a), and explains that, unless otherwise specified in proposed new § 351.226, Commerce's existing procedures contained in subpart C (*i.e.,* relating to factual information (§§ 351.102(b)(21) and 351.301) and the extension of time limits (§ 351.302)) apply to circumvention inquiries.

Under proposed paragraph (b), Commerce could self-initiate a circumvention inquiry based on information available to it, while under proposed paragraph (c), Commerce could initiate a circumvention inquiry based on the filing of an inquiry request by an interested party.[77] If Commerce self-initiates, it would publish a notice of initiation in the **Federal Register**. If a circumvention inquiry request is filed with Commerce, the filing party would have to notify all parties on the annual inquiry service list, set forth in proposed §§ 351.225(n) and 351.226(n). Proposed paragraph (c)(2) would also set forth the information to be included in a circumvention inquiry request. Commerce expects that such a request would include not only a detailed description of the merchandise allegedly circumventing the order, but also public identification of any producers, exporters, or importers of the merchandise.[78] As with respect to the revised scope ruling application described in proposed § 351.225(c), it is understood that not all of the information listed will be available to all interested parties requesting a circumvention inquiry. For example, the domestic industry may know certain details about a company's ''further manufacturing'' of a product, but it may not be able to supply ''a description of parts, materials, and the production process employed in the production of the product.'' For this reason, proposed paragraph (c)(2) would require that the described information in the circumvention inquiry request be provided to the extent reasonably available to the requestor.

Proposed paragraph (d) would provide the deadlines for initiation of a circumvention inquiry. The deadline for initiation would be shortened from the current 45 days to 20 days, with a possible extension of up to a total of 35 days. However, initiation would only occur if Commerce concludes that the request properly alleges that the elements necessary for a circumvention determination under section 781 of the Act exist and is accompanied by information reasonably available to the interested party supporting these allegations. If the circumvention request is incomplete or otherwise unacceptable, the Secretary may reject the request and will reconsider it if it is resubmitted with sufficient documentation. Additionally, Commerce could defer its initiation of a circumvention inquiry if it determines that a scope question should first be addressed in a new or ongoing segment of a proceeding, such as a scope inquiry under the proposed revisions to § 351.225.

Paragraph (d)(2) refers to proposed § 351.225(i)(1), which expressly allows Commerce to address scope issues in the context of a circumvention inquiry, rather than conduct a separate scope inquiry under § 351.225. In certain circumstances, a party may submit a request for a circumvention inquiry, which requires Commerce to consider, in the first instance, whether the product at issue is already covered by the scope of the order at issue in its scope ruling procedures under § 351.225. If a product is already subject to the scope of the order, a circumvention inquiry may not be necessary. To consolidate its resources and avoid unnecessary duplication of effort, proposed §§ 351.226(d)(2) and 351.225(i)(1) would allow Commerce to address scope and circumvention issues more efficiently, by allowing scope issues to be addressed within the context of a circumvention inquiry.

Proposed paragraph (e) would provide the deadlines for Commerce to conduct circumvention inquiries, consistent with section 781(f) of the Act, which sets a deadline for circumvention determinations within 300 days from the date of publication of the initiation notice, to the maximum extent practicable. Proposed paragraph (e)(1) would establish a new deadline for preliminary determinations of 150 days from the date of publication of the initiation notice. Proposed paragraph (e)(2) restates the statutory deadline, and also sets forth that Commerce would only be able to extend the 300-

[72] Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No. 100–71, at 101 (1987).

[73] *Id.*

[74] *Id.*

[75] *See* SAA at 892–95.

[76] *Tung Mung,* 219 F. Supp. 2d at 1343 (quoting *Mitsubishi I,* 700 F. Supp. at 555, *aff'd* 898 F.2d at 1583).

[77] To be clear, Commerce already has the authority to self-initiate anti-circumvention inquiries under the current regulations. *See* 19 CFR 351.225(b). As noted above with respect to the proposed changes to the scope regulations, the term ''interested party'' is defined in section 771(9) of the Act, and pertains, for example, to ''foreign manufacturers,'' ''producers,'' ''exporters,'' or ''United States importers'' ''of subject merchandise.'' However, the nature of a circumvention proceeding is to determine whether the merchandise produced, imported by, or exported by a party is circumventing an AD or CVD order. Thus, in many cases, the question of whether a party is an ''interested party'' is tied to the question of whether the merchandise at issue is determined to be subject merchandise, or not. Accordingly, for purposes of these circumvention regulations, the term ''interested party'' includes a party that potentially meets the definition of ''interested party'' under section 771(9) of the Act, depending upon the outcome of the circumvention inquiry.

[78] Commerce recognizes that the identity of the producers, exporters and or importers alleged to be participants to circumvention may not be public, but that such information can be very important to the conduct of a circumvention inquiry. Accordingly, although the regulation requests public names be provided, if available, it also stresses that this provision is not intended to restrict the inclusion of the business proprietary names of those entities in the application if the requester has access to that data.

day statutory deadline by no more than 65 days if it determined that an inquiry was extraordinarily complicated. It is Commerce's understanding that for an inquiry to be extraordinarily complicated there would exist, for example, novel facts or issues (such as facilities being ravaged by natural disasters or unusual or complicated government or business practices), or a large number of firms involved in the inquiry.

Proposed paragraph (f) would provide the procedures for circumvention inquiries, and largely tracks the proposed new scope inquiry procedures provided under proposed § 351.225(f), as well as the requirements provided under current § 351.225(f)(7) concerning notification to the ITC. This provision also explains that Commerce could limit the issuance of questionnaires to a reasonable number of respondents. In practice, Commerce could do this through a respondent selection process.

Proposed paragraph (f)(4) would also establish deadlines regarding comments and rebuttal comments after a preliminary circumvention determination under proposed paragraph (g) if the preliminary circumvention determination is not issued concurrently with the initiation of the circumvention inquiry. Proposed paragraph (f)(5) would provide Commerce with the ability to establish alternative procedures if the preliminary circumvention determination issued under proposed paragraph (g) is issued concurrently with the initiation of the circumvention inquiry.[79] Additionally, proposed paragraph (f)(6) would allow Commerce to forego or rescind a circumvention inquiry, in whole or in part, if a circumvention request is withdrawn or if Commerce issues a final determination in another segment of the proceeding under an AD and/or CVD order that the merchandise at issue in the circumvention inquiry is covered by that order (or orders). Commerce could also rescind if the basis for the initiation of the circumvention inquiry included multiple provisions under section 781 of the Act, and Commerce need only reach a final determination with respect to one of those provisions. This most frequently happens if a circumvention inquiry examines whether merchandise is altered in minor respects or later-developed merchandise, and Commerce need only address one of those provisions to reach an affirmative determination. Proposed paragraph (f)(7) would allow Commerce to alter deadlines under this paragraph, as appropriate, including to align the deadlines of the circumvention inquiry with another segment of the proceeding, such as a scope inquiry, under proposed new § 351.225.

Finally, proposed paragraph (f)(8) would also maintain provisions regarding notification to the ITC under current § 351.225(f)(7). Unless otherwise specified, Commerce's current procedural regulations concerning factual information (19 CFR 351.102(b)(21) and 19 CFR 351.301), including the extension of time limits (19 CFR 351.302), apply to circumvention procedures and would continue to apply under the proposed revisions.

Proposed paragraph (g) follows proposed §§ 351.225(g) and (h) with respect to preliminary and final circumvention determinations. However, unlike preliminary and final scope rulings, preliminary and final circumvention determinations will both be published in the **Federal Register**. Similar to proposed § 351.225(g), proposed paragraph (g)(1) would allow Commerce to issue a preliminary circumvention determination, based on available information at the time, as to whether there is a reasonable basis to believe or suspect that the elements necessary for a circumvention determination under section 781 of the Act exist. Proposed paragraph (g)(2) largely tracks the similar provision under proposed § 351.225(h) concerning the issuance of final scope rulings. Thus, proposed paragraph (g)(2) provides that Commerce would ''convey'' the final circumvention determination in accordance with the requirements of section 516A(a)(2)(A)(ii) of the Act, which states that judicial review of ''class or kind'' determinations under section 516A(a)(2)(B)(vi) of the Act, such as scope rulings and circumvention determinations, are based off of the date of mailing of such determination. Section 516A(a)(2)(A)(ii) of the Act further provides that only ''an interested party who is a party to the proceeding'' may commence judicial review procedures. Therefore, aside from its obligation to publish notice of the final circumvention determination in the **Federal Register**, Commerce proposes to convey a copy of the final circumvention determination in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act (*i.e.,* mailing) to interested parties who are parties to the proceeding (*see* § 351.102(b)(36)), because these are the only parties that have legal standing to appeal the final circumvention determination under section 516A(a)(2)(A)(ii) of the Act.

Furthermore, paragraph (g)(2) states that Commerce will ''promptly'' convey a copy of the final circumvention determination after publication in the **Federal Register**. The use of the term ''promptly'' is consistent with the use of the same term in revised section 225 and new section 227. It is Commerce's expectation that prompt conveyance of a copy of the final circumvention determination normally would occur no more than 5 business days from the publication of the determination in the **Federal Register**. Consistent with sections 516A(a)(2)(A)(ii) and (B)(vi) of the Act, judicial review procedures would be commenced based on the date of conveyance, as opposed to the date of receipt, of a final circumvention determination. Additionally, as with any other document that is placed on the record by the agency, all interested parties on the segment-specific service lists will be notified of the final circumvention determination through Commerce's electronic ACCESS system.

Proposed paragraphs (h) and (i) relate to the current regulatory provisions for products completed or assembled in the United States or other foreign countries found in current §§ 351.225(g) and (h), respectively, with two important proposed revisions. First, we have removed statements that no one single factor under sections 781(a)(2) and 781(b)(2) of the Act will be controlling. We recognize that this language adopts similar language from the SAA.[80] However, this statement alone, without additional context, has raised questions. In particular, the SAA states: ''Commerce will evaluate each of {the factors under sections 781(a)(2) and 781(b)(2) of the Act} as they exist either in the United States or a third country, depending on the particular circumvention scenario. No single factor will be controlling.'' The SAA also provides that these provisions ''do not establish rigid numerical standards for determining the significance of the assembly (or completion) activities in the United States or for determining the significance of the value of the imported parts or components.'' [81] Therefore, although no one single factor should control Commerce's analysis, this statement in the SAA should be considered in light of the evidence before Commerce in a given case and is not intended to limit Commerce's discretion to evaluate the particularities of the circumvention scenario.

[79] To be clear, Commerce already has the authority under existing regulations to issue a preliminary circumvention determination concurrently with initiation.

[80] *See* SAA at 893.

[81] *Id.* at 894.

Accordingly, we are proposing to remove the statement from paragraphs (h) and (i).

Second, we propose removing specific reference to the major input rule under section 773(f)(3) of the Act in paragraphs (h) and (i). Under current §§ 351.225(g) and (h), in determining the value of parts or components purchased from an affiliated person under sections 781(a)(1)(D) and 781(b)(1)(D) of the Act, or of processing performed by an affiliated person under sections 781(a)(2)(E) and 781(b)(2)(E) of the Act, the value of the part or component may be based on the cost of producing the part or component under section 773(f)(3) of the Act. The *1996 Proposed Rule* added this reference to the ''transactions disregarded'' and ''major input'' rules applicable to affiliated transactions set forth in 773(f)(3) of the Act in response to comments raised before Commerce at the time.[82] Additionally, the *1997 Final Rule* further explained that the SAA clearly contemplates the use of the major input rule in appropriate circumstances, and, in response to comments, also explained that cost of production may be used as the basis of the value for inputs from affiliated persons.[83] Based on our more recent experience, we believe it would be beneficial to codify that determinations of the value of parts or components on the basis of the cost of producing the part or component may be conducted under the various applicable provisions of section 773—in this case, section 773(e) (constructed value) and 773(c) (factors of production under the nonmarket economy methodology) of the Act. The major input rule under section 773(f)(3) will still apply, as appropriate, in accordance with this applicable statutory framework.

Proposed paragraph (j) would incorporate the current regulatory provision, § 351.225(i), pertaining to minor alteration of merchandise under section 781(c) of the Act, with some additions. Although the statute is silent regarding what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates there are certain criteria that should be considered before reaching a circumvention determination.[84] Previous circumvention cases conducted by Commerce have relied on those enumerated criteria.[85] These would now be incorporated into paragraph (j). Additionally, in conducting a minor alteration circumvention inquiry, under section 781(c) of the Act, we have analyzed other factors, as appropriate on a case-by-case basis, including the circumstances under which the products enter the United States, the timing of the entries during the circumvention review period, and the quantity of merchandise entered during the circumvention review period.[86] We would incorporate these additional factors, which is a non-exhaustive list, in paragraph (j).

Proposed paragraph (k) would incorporate the current regulatory provision, § 351.225(j), pertaining to later-developed merchandise, under section 781(d) of the Act, with some additions. In conducting a later-developed merchandise circumvention inquiry, under section 78l(d)(l) of the Act, and in determining whether the merchandise is ''later-developed,'' Commerce first examines whether the merchandise at issue was commercially available at the time of the initiation of the AD and CVD investigation.[87] We would incorporate the commercial availability standard into paragraph (k), as this is judicially-affirmed and well-established in our practice. Commerce intends to consider whether a product is ''commercially available'' on a case-by-case basis in light of the record of the proceeding. If Commerce determines that such merchandise was not commercially available at the time of the investigation, and is, thus, later-developed, Commerce would consider whether the later-developed merchandise is covered by the orders pursuant to the statutory factors identified in section 781(d)(1) of the Act.

Proposed paragraph (l) of § 351.226 would alter the suspension of liquidation requirements found in current § 351.225(l) (which apply to circumvention inquiries) and mirror the proposals to § 351.225(l) pertaining to scope, which have already been described above.

Thus, proposed paragraph (l)(1) of § 351.226 provides that when Commerce initiates a circumvention inquiry under proposed paragraphs (b) or (d), it will notify CBP of the initiation and direct CBP to continue the suspension of liquidation of all unliquidated entries of products subject to the circumvention inquiry that are currently suspended by CBP[88] at the applicable cash deposit rate that would apply if the product were determined to be circumventing the order.

Further, proposed paragraph (l)(2) of § 351.226 provides that if Commerce issues a preliminary circumvention determination under proposed paragraph (g)(1) that the product at issue is circumventing an AD and/or CVD order, Commerce will direct CBP to: (1) Continue suspension of liquidation of already suspended entries; (2) suspend

[82] *See 1996 Proposed Rule,* 61 FR at 7322. Clarifying edits to this language were made in the *1997 Final Rule. See 1997 Final Rule,* 62 FR at 27328 (clarifying that application of the major input rule is discretionary for purposes of both U.S. and third country assembly).

[83] *See 1997 Final Rule,* 62 FR at 27328 (citing SAA at 894).

[84] *See* Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No. 100–71, at 100 (1987) (stating that Commerce ''should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article{,}'' and providing a list of criteria to be considered).

[85] *See, e.g., Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan,* 68 FR 33676, 33677 (June 5, 2003).

[86] *See Preliminary Determination of Circumvention of Antidumping Order; Cut to Length Carbon Steel Plate from Canada,* 65 FR 64926, 64929–31 (October 31, 2000), unchanged in *Final Determination of Circumvention of Antidumping Order; Cut to Length Carbon Steel Plate from Canada,* 66 FR 7617 (January 24, 2001).

[87] *See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 71 FR 32033, 32037–40 (June 2, 2006), unchanged in *Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 71 FR 59075 (October 6, 2006); *Candles Anticircumvention Final,* 71 FR at 59077 and accompanying Issues and Decision Memorandum at Comment 4, amended by Redetermination Pursuant to Court Remand Order in *Target Corporation* v. *United States,* 578 F. Supp. 2d 1369 (CIT 2008) (November 7, 2008), affirmed by *Target Corp.* v. *United States,* 626 F. Supp. 2d 1285 (CIT 2009), and *Target Corp.,* 609 F.3d at 1358–60 (holding that Commerce's interpretation of later-developed, as turning on whether the merchandise was commercially available at the time of the investigation, is reasonable). *See also Erasable Programmable Read Only Memories from Japan; Final Scope Ruling,* 57 FR 11599 (April 6, 1992); *Electrolytic Manganese Dioxide from Japan; Final Scope Ruling,* 57 FR 395 (January 6, 1992); *Portable Electronic Typewriters from Japan,* 55 FR 47358 (November 13, 1990).

[88] As discussed above, entries may be ''currently suspended by CBP'' under a variety of scenarios. *See Sunpreme III,* 946 F.3d at 1317–18 (discussing CBP's authority to suspend liquidation of entries that CBP determines are within the scope of an AD/CVD order unless appealed to Commerce); section 517 of the Act (authorizing CBP to suspend liquidation of entries for which it has reasonable suspicion, or, in the case of final determination, substantial evidence, that covered merchandise is entered into the United States through evasion under section 517(e) and (d) of the Act). Additionally, as discussed above, consistent with current practice and in accordance with CBP's statutory and regulatory authorities, CBP may stay its action on entries of products that CBP has liquidated but for which liquidation is not yet final pending the outcome of a circumvention inquiry.

liquidation of all other products at issue that are unliquidated; and (3) apply the applicable cash deposit rate under the order to unliquidated entries.

Proposed paragraph (l)(4) provides that if Commerce issues a negative final determination under paragraph (g)(2), and the product is not otherwise subject to suspension as a result of another segment of a proceeding, such as a covered merchandise inquiry under § 351.227, for merchandise that was suspended and for which cash deposit rates were paid, Commerce would instruct CBP to terminate suspension of liquidation and refund cash deposits (if any) on entries of this non-subject merchandise.

On the other hand, if Commerce concludes in a final determination under proposed paragraph (g)(2) that circumvention has occurred, then under proposed paragraph (l)(3) Commerce would direct CBP to: (1) Continue suspension of liquidation of already suspended entries, including those entries subject to suspension of liquidation as a result of another segment of a proceeding, such as an administrative review under § 351.213; (2) suspend liquidation of all products at issue which are unliquidated; and (3) apply the applicable cash deposit rate under the order to unliquidated entries, until appropriate liquidation instructions are issued pursuant to §§ 351.212 and 351.213.[89]

As described in further detail above in the discussion of proposed paragraph (l) of § 351.225, these procedures deviate from the current § 351.225 framework in two key respects. First, upon an affirmative preliminary or final circumvention determination, Commerce will instruct CBP to suspend liquidation of any unliquidated entries, not only those that entered on or after the date of initiation of the circumvention inquiry. Second, the proposed regulation does not require Commerce to notify CBP of a negative preliminary circumvention determination, and, therefore, suspension of liquidation for already suspended entries (if any) will remain in effect pending Commerce's issuance of a final circumvention determination.

These suspension of liquidation procedures and cash deposit requirements will result in a more effective application of circumvention determinations. As discussed above, Congress enacted section 781 of the Act to combat certain forms of circumvention of AD and CVD orders, however, neither section 781 of the Act nor any other provision of the Act contains specific guidance regarding when merchandise found to be circumventing an AD and/or CVD order should be subject to suspension of liquidation and cash deposit requirements. When Congress passed the Omnibus and Trade Competitiveness Act of 1988, it explained that the purpose of the circumvention statute ''is to authorize the Commerce Department to apply antidumping and countervailing duty orders in such a way as to prevent circumvention and diversion of U.S. law.'' [90] Congress also recognized that ''aggressive implementation of {the circumvention statute} by the Commerce Department can foreclose these practices.'' [91] Consistent with Congress's intent when enacting the circumvention statute, these proposals for paragraph (l) of § 351.226 will help prevent companies from eluding the payment of duties if Commerce ultimately concludes that the merchandise is circumventing an AD and/or CVD order.

Proposed paragraph (m) would address the effect and application of circumvention determinations. In its experience, Commerce has witnessed scenarios in which the circumvention determined to exist was unique to the interested party under review. In that situation, a company-specific circumvention determination is warranted. However, Commerce has also found circumvention to exist in other cases in which the circumvention warranted a country-wide determination. Accordingly, the regulation would recognize that section 781 of the Act provides Commerce with the discretion to apply a circumvention decision on a country-wide basis, and therefore allows for Commerce to consider whether a country-wide application is warranted on a case-by-case basis in circumvention inquiries. One of the factors Commerce may consider in making such a determination is the possibility of subsequent circumvention by other producers, exporters, or importers following the issuance of an affirmative company-specific circumvention determination.

Proposed paragraph (m) would also address the potential overlap between a circumvention inquiry and other segments of the proceeding and would allow Commerce to take appropriate action in such other proceedings. For example, Commerce could request information concerning the product that is the subject of the circumvention inquiry for purpose of an administrative review under § 351.213.

Proposed paragraphs (m) and (n) would together address a problem that arises when a circumvention determination would apply equally to companion AD and CVD orders, which cover the same merchandise from the same country, and largely mirror the same paragraphs under the proposed revisions to § 351.225. In that scenario, an interested party requesting a circumvention inquiry pertaining to both orders pursuant to paragraph (c) must file its request on the record of the AD duty proceeding only, and serve its circumvention inquiry request to all parties on the annual inquiry service list for both the AD and CVD orders. The annual inquiry service list and related procedures are discussed in proposed § 351.225(n). Once Commerce initiates the circumvention inquiry, Commerce would initiate and conduct that inquiry pertaining to both orders only on the record of the AD duty proceeding.[92] Once Commerce issues a final circumvention determination on the record of the AD proceeding, Commerce would include a copy of that determination on the record of the CVD proceeding and notify CBP in accordance with paragraph (l). As noted above, by limiting the circumvention inquiry only to the record of one proceeding, the chances of incomplete records, or confusing records being filed with courts on appeal, should be lessened.

Proposed paragraph (n) would address service requirements and largely tracks the same provision under proposed § 351.225(n), *i.e.,* interested parties filing a circumvention inquiry request must serve all parties on the annual inquiry service list for that order and any companion order. Under proposed paragraph (n), once a circumvention inquiry is initiated under paragraph (b) or (d), a segment-specific service list would be established, under § 351.103(d)(1), and the requirements of

[89] As discussed above, consistent with current practice and in accordance with CBP's statutory and regulatory authorities, CBP may stay its action on entries of products that CBP has liquidated but for which liquidation is not yet final pending the outcome of a circumvention inquiry. Additionally, any instructions issued by Commerce directing CBP to ''lift suspension of liquidation'' and assess duties at the applicable AD/CVD rate are not intended to impugn CBP's ability to (1) suspend liquidation/assess duties/take any other measures pursuant to CBP's EAPA investigation authority under section 517 of the Act specifically, or (2) take any other action within CBP's or HSI's authority with respect to AD/CVD entries.

[90] Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No. 100–71, at 101 (1987).

[91] *Id.*

[92] Under that scenario, Commerce would follow the procedures of paragraph (l) for both orders.

§ 351.303(f) would apply. Once the segment-specific service list is established, parties on the annual inquiry service list would no longer be served with filings made pursuant to the circumvention inquiry, unless they follow the procedures of § 351.103(d)(1) by filing an entry of appearance in the relevant circumvention segment. However, as discussed further below, Commerce proposes to amend § 351.103(d)(1) to reflect that an interested party that submits a request for circumvention inquiry need not file an entry of appearance under § 351.103(d)(1), as that party will be placed on the segment-specific service list by Commerce. Additionally, as discussed further below, Commerce proposes to amend § 351.305(d) to adopt special filing requirements for importers seeking access to business proprietary information in circumvention inquiries.

Finally, proposed paragraph (o) would allow for the circumvention inquiry procedures of § 351.226, discussed above, to apply to suspended investigations and suspension agreements.

Covered Merchandise Referrals—Section 351.227

As discussed above, Commerce and CBP work together to ensure the effectiveness of AD/CVD orders, and both agencies have their own independent authority to examine potential circumvention and duty evasion of existing orders.[93] Pursuant to section 421 of the Enforce and Protect Act of 2015,[94] effective August 22, 2016, section 517 was added to the Act, which establishes a formal process for CBP to conduct civil administrative investigations of potential duty evasion of AD and CVD orders on the basis of an allegation by an interested party or upon referral by another Federal agency (referred to herein as an ''EAPA investigation'').[95] Pursuant to section 517(b)(4)(A) of the Act, if CBP is conducting an EAPA investigation based on an allegation from an interested party, and is unable to determine whether the merchandise at issue is ''covered merchandise'' within the meaning of section 517(a)(3) of the Act, it shall refer the matter to Commerce to make a covered merchandise determination (referred to herein as a ''covered merchandise referral'').[96]

Section 421 of the EAPA requires that the Secretary of the Treasury prescribe regulations as necessary to implement the amendments.[97] Although the EAPA does not mandate that Commerce promulgate regulations, in order to provide clarity and consistency to the public, Commerce proposes to adopt § 351.227, a new regulation to address procedures and standards specific to Commerce's consideration of covered merchandise referrals. In particular, this new regulation would govern Commerce's receipt of a covered merchandise referral, Commerce's initiation and conduct of a covered merchandise inquiry, and Commerce's covered merchandise determination, pursuant to section 517(b)(4) of the Act. The proposed rulemaking is intended to provide for efficient notice and service requirements, expedited deadlines, and streamlined opportunities to solicit information and comment from interested parties. These proposed changes are procedural in nature and pertain to the agency's internal process in conducting its covered merchandise inquiry. In addition, these changes would not alter the current statutory or regulatory framework under which Commerce may already request participation of interested parties and issue a substantive determination that certain merchandise is within the scope of an AD/CVD order, as detailed above.

In promulgating the proposed procedures, Commerce is mindful of three aspects of the EAPA. First, as discussed above, section 517(b)(4) of the Act requires CBP to make a covered merchandise referral to Commerce if it is unable to determine whether the merchandise at issue is covered merchandise within the meaning of section 517(a)(3) of the Act. To date, Commerce has received only a few covered merchandise referrals,[98] and, thus, we are still familiarizing ourselves with the facts and circumstances that would lead CBP to choose to make such a referral, as well as the facts and circumstances that would be appropriate for Commerce to consider in reaching its covered merchandise determination. For instance, there may be a need for Commerce to seek further information to establish a more detailed description of the merchandise at issue, or engage in a complex analysis, before determining whether the merchandise is covered merchandise. Commerce, therefore, needs to maintain flexibility in both its opportunities to request information and the issues that it considers in its analysis, before reaching a covered merchandise determination.

Second, the EAPA does not prescribe timing requirements for Commerce to reach its covered merchandise determination. Nevertheless, section 517(b)(4)(B) of the Act instructs Commerce to promptly transmit its determination to CBP. In addition, the EAPA (section 517(b)(4)(C) of the Act) provides that CBP's own deadlines to complete its EAPA investigation will be stayed pending completion of Commerce's covered merchandise determination. In drafting the proposed regulations, Commerce is taking timeliness into account, which we believe is consistent with the intent of Congress in drafting the EAPA.

Third, section 517(b)(4)(D) of the Act provides that the statutory scheme for judicial review under section 516A(a)(2) of the Act applies to Commerce's covered merchandise determinations.[99] Under the applicable standard of review, Commerce's determinations must be supported by substantial evidence and in accordance with law (*see* section 516A(b)(1)(B) of the Act). Thus, to ensure that its covered merchandise determinations meet this standard, Commerce intends to ensure that parties are afforded opportunities to submit evidence and argument for Commerce's consideration in reaching its determination. Further, Commerce intends to allow sufficient time for it to consider such evidence and arguments for purposes of drafting a well-reasoned determination that may be subject to judicial review.

In short, in proposing new § 351.227, we have taken into account considerations relating to: (1) Flexibility

[93] Additionally, HSI has the authority to investigate criminal violations related to illegal evasion of payment of required duties, including payment of AD/CV duties. *See, e.g.,* 18 U.S.C. 542.

[94] Public Law 114–125, 130 Stat. 122, 155 (2016).

[95] *Id.,* sections 421(a)-(d), 130 Stat. at 161–169.

[96] *See* H.R. Rep. No. 114–376, at 190 (2015) (EAPA Conf. Rep.) (''If the Commissioner is unable to determine whether the merchandise at issue is covered merchandise, the Commissioner shall refer the matter to the Department of Commerce to determine whether the merchandise is covered merchandise. The Department of Commerce is to make this determination pursuant to its applicable statutory and regulatory authority, and the determination shall be subject to judicial review under 19 U.S.C. 1516a(a)(2). The Conferees intend that such determinations include whether the merchandise at issue is subject merchandise under 19 U.S.C. 1677j.'') (referencing sections 516 and 781 of the Act).

[97] *See also Investigation of Claims of Evasion of Antidumping and Countervailing Duties, Interim Regulations,* 81 FR 56477 (August 22, 2016) (setting forth CBP's interim regulations under section 517 of the Act).

[98] *See Wooden Bedroom Furniture From the People's Republic of China: Notice of Covered Merchandise Referral,* 83 FR 9272 (March 5, 2018); *Hydrofluorocarbon Blends From the People's Republic of China: Notice of Covered Merchandise Referral,* 83 FR 9277 (March 5, 2018); and *Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Covered Merchandise Referral,* 83 FR 9280 (March 5, 2018).

[99] *See* EAPA Conf. Rep. at 190.

in Commerce's ability to request information necessary for its analysis in reaching a covered merchandise determination; (2) timeliness; and (3) scheduling that allows Commerce sufficient time to analyze the issues and the record evidence and issue a determination that may be subject to judicial review. However, although we are setting forth these proposed regulations, as noted above, covered merchandise inquiries constitute a new type of segment of a proceeding at Commerce and, therefore, Commerce will continue to develop its practice and procedures in this area. Further, as detailed below, Commerce recognizes the potential significant overlap between a covered merchandise inquiry, scope inquiry and circumvention inquiry procedures discussed above under §§ 351.225 and 351.226, and possibly any other segment of a proceeding that may address scope issues.[100] Therefore, in crafting these regulations, Commerce has allowed for the flexibility to address CBP's covered merchandise referrals in the context of another segment of the proceeding, or to otherwise rely on the standards under section 351.225 and 226, in issuing a covered merchandise determination.

Proposed section 351.227(a) would introduce the new section and briefly describes the framework of CBP's EAPA investigations and covered merchandise referrals under section 517 of the Act. Additionally, paragraph (a) tracks the similar provision in proposed sections 351.225 (scope inquiries) and 351.226 (circumvention inquiries), explaining that, unless otherwise specified in new section 351.227, Commerce's existing procedures contained in subpart C (*i.e.,* relating to factual information (sections 351.102(b)(21) and 351.301) and the extension of time limits (section 351.302)), apply to covered merchandise inquiries.

Proposed paragraph (b) would provide that, within 15 days after receiving a covered merchandise referral that Commerce determines to be sufficient, Commerce will take one of three actions. First, under paragraph (b)(1), Commerce may initiate a covered merchandise inquiry and will publish notice of its initiation in the **Federal Register**. Second, under paragraph (b)(2), Commerce may self-initiate a circumvention inquiry in accordance with proposed section 351.226(b) and publish notice of its initiation in the **Federal Register**. Third, under paragraph (b)(3), if Commerce determines that the covered merchandise referral can be addressed in an ongoing segment of a proceeding, such as a scope inquiry, under the proposed revisions to section 351.225, or circumvention inquiry, under proposed section 351.226, Commerce will publish a notice in the **Federal Register** that it intends to address the referral in the context of such other segment.

In determining whether a covered merchandise referral is sufficient, Commerce may consider, among other things, whether the referral has provided the name and contact information of the parties to CBP's EAPA investigation, including the name and contact information of any known representative acting on behalf of such parties; an adequate description of the alleged covered merchandise; identification of the applicable AD or CVD orders; and any necessary information reasonably available to CBP regarding whether the merchandise at issue is covered merchandise. Additionally, Commerce will review the covered merchandise referral and any accompanying documentation to ensure any business proprietary information is properly redacted in accordance with Commerce's statutory and regulatory requirements. Regardless of which of the three actions Commerce takes with respect to the covered merchandise referral, Commerce will place the documents on the record of the segment of the proceeding under which Commerce intends to address the referral.

Proposed paragraph (c) would provide the deadline for Commerce to conduct covered merchandise inquiries and would also set forth that Commerce could only extend the deadline if it determines that the inquiry is extraordinarily complicated. This tracks similar language under new section 351.226 (circumvention inquiries).

Proposed paragraph (d) would provide the procedures for covered merchandise inquiries, and largely tracks the new procedures provided under proposed sections 351.225(f) (scope inquiries) and 351.226(f) (circumvention inquiries), with some exceptions. For example, paragraph (d)(5) would allow Commerce to forego or rescind a covered merchandise inquiry, in whole or in part, for one of three reasons: First, if CBP withdraws its covered merchandise referral; second, if the Secretary issues a final determination in another segment of a proceeding, which can provide the basis for the Secretary's covered merchandise determination, thus negating the need for a separate covered merchandise inquiry; and, third, where Commerce otherwise determines that it is not necessary to initiate or conduct a covered merchandise inquiry in response to a covered merchandise referral because the matter at issue may be addressed by other means. With respect to this third category, this could happen where Commerce believes a prior scope ruling or circumvention determination can provide the basis for Commerce's covered merchandise determination. In such instances, Commerce will issue a final covered merchandise determination in accordance with the requirements of paragraph (e)(2) of this section.

Proposed paragraph (e) would incorporate preliminary and final covered merchandise determinations, which will both be published in the **Federal Register**, and largely tracks the requirements under proposed section 351.226 pertaining to circumvention inquiries. Similar to proposed section 351.226(g)(1), proposed paragraph (e)(1) would allow Commerce to issue a preliminary covered merchandise determination, based on available information at the time, as to whether there is a reasonable basis to believe or suspect that the product that is the subject of the covered merchandise inquiry is covered by the scope of the order. Proposed paragraph (e)(2), which tracks proposed section 351.226(g)(2), would provide that, promptly after publication of the final covered merchandise determination, Commerce would convey a copy of the final determination, in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act, to all parties to the proceeding, and transmit a copy of the final determination to CBP, thus fulfilling its obligation under section 517(b)(4)(B) of the Act. The use of the term ''promptly'' is not defined in section 517(b)(4)(B) of the Act. Consistent with the use of the same term in revised section 351.225 and new section 351.226, it is Commerce's expectation that prompt conveyance and transmittal of a copy of the final covered merchandise determination normally would occur no more than 5 business days from the publication of the determination in the **Federal Register**. Consistent with sections 516A(a)(2)(A)(ii) and (B)(vi) of the Act, judicial review procedures would be commenced based on the date of conveyance, as opposed to the date of receipt, of a final covered merchandise determination.

[100] *Id.* (''The Department of Commerce is to make this determination pursuant to its applicable statutory and regulatory authority, and the determination shall be subject to judicial review under 19 U.S.C. 1516a(a)(2). The Conferees intend that such determinations include whether the merchandise at issue is subject merchandise under 19 U.S.C. 1677j.'').

Paragraph (e)(3) would also clarify that if Commerce addresses the covered merchandise referral in the context of another segment of the proceeding, or issues a scope ruling, under section 351.225, or a circumvention determination, under section 351.226, which provides the basis for the covered merchandise determination, Commerce would promptly transmit a copy of the final action in that segment to CBP in accordance with section 517(b)(4)(B) of the Act.

Proposed paragraph (f) would explain that, if Commerce issues a covered merchandise determination after conducting a covered merchandise inquiry, Commerce may rely on the standards provided under proposed sections 351.225(j) (country of origin) or (k) (scope rulings). Commerce also could rely on the provisions of section 781 of the Act regarding the four forms of circumvention (proposed sections 351.226(h), (i), (j), or (k)). We believe this is consistent with the legislative history, which specifically identifies that Commerce may follow its existing statutory and regulatory authority in issuing a covered merchandise determination.[101]

To maintain consistency with proposed sections 351.225 and 351.226, proposed paragraphs (g)–(k) would be reserved. Additionally, the following paragraphs would largely mirror the same provisions in proposed sections 351.225 and 351.226, which have been discussed in detail above: Paragraph (l) concerning suspension of liquidation; paragraph (m) concerning applicability of covered merchandise determinations; other segments of the proceeding, and companion AD and CVD orders; paragraph (n) concerning service; and paragraph (o) concerning suspended investigations and suspension agreements. Additionally, with respect to proposed paragraph (l), as discussed above, any instructions issued by Commerce directing CBP to ''lift suspension of liquidation'' and assess duties at the applicable AD/CVD rate are not intended to impugn CBP's ability to (1) suspend liquidation/assess duties/take any other measures pursuant to CBP's EAPA investigation authority under section 517 of the Act specifically, or (2) take any other action within CBP's or HSI's authority with respect to AD/CVD entries.

Certifications—Section 351.228

At various points throughout its history of administering the AD and CVD laws, Commerce has determined that the establishment of a certification scheme is necessary to ensure the enforcement of the AD/CVD orders or suspension agreements. For example, to carry out the terms of certain suspension agreements, Commerce has required importers, producers, and exporters to certify to certain requirements with respect to the entries and sales of merchandise subject to the agreement.[102] Commerce has also required certifications for various AD and CVD orders.[103] Additionally, Commerce has established a certification scheme in the context of its circumvention inquiries to ensure that parties claiming merchandise is not subject to an AD/CVD order, as a result of a circumvention determination, must certify and maintain documentation to that effect.[104]

Proposed section 351.228 would codify and enhance Commerce's existing authority and practice to require certifications by importers and other interested parties as to whether merchandise is subject to an AD/CVD order. Under proposed section 351.228(b), where that party fails to comply with the certification requirements by failing to provide the certification upon request, or providing a certification that contains materially false, fictitious, or fraudulent statements or representations, or material omissions, to Commerce or CBP, as appropriate, Commerce would have the authority to instruct CBP to collect from the importer cash deposits for the AD or CVD at the applicable rate. Commerce recognizes that CBP has its own independent authority to address import documentation related to negligence, gross negligence, or fraud.[105] This provision is not intended to supplant CBP's authority, nor is a formal finding by CBP required for Commerce to determine, within its own authority, that the certification is deficient and unreliable for the reasons discussed above. Whether a certification contains ''material'' or ''fraudulent'' information is a determination that would be made by Commerce pursuant to its own authority and consideration of the normal meaning of those terms.[106]

Importer Reimbursement Certification—Section 351.402(f)(2)

Section 351.402(f)(1)(i) of Commerce's regulations provide that in calculating the export price, or constructed export price in determining an AD margin, Commerce will deduct any AD or CVD duties that the exporter or producer paid on behalf of the importer or reimbursed to the importer. Section 351.402(f)(1)(ii) provides an exception that in calculating export price or constructed export price, Commerce will not deduct AD or CVD duties if an exporter or producer granted to the importer before initiation of the AD investigation in question a warranty of nonapplicability of AD/CVD duties with respect to subject merchandise (1) sold before the date of publication of the notice of first suspension of liquidation, and (2) exported before the date of publication of the final AD determination.

Section 351.402(f)(2) currently requires importers of AD entries to file prior to liquidation a certificate with CBP that identifies whether the importer has or has not entered into an agreement for the payment or reimbursement of AD or CVD duties. This certificate is required for each entry (or a group of entries) subject to AD duties, and must identify the relevant merchandise to which it relates. Consistent with section 351.402(f)(1)(i), if an importer certifies that it has entered into an agreement for the payment or reimbursement of AD or CVD duties, Commerce will deduct any AD or CVD duties that the exporter or producer paid on behalf of the importer or reimbursed to the importer. However, consistent with section 351.402(f)(2)(ii), Commerce will not deduct AD or CVD duties paid or reimbursed with respect to subject merchandise (1) sold before the date of publication of the notice of first suspension of liquidation, and (2) exported before the date of publication of the final AD determination where, before the initiation of the AD investigation in question, the exporter or producer granted a warranty of nonapplicability of AD or CVD duties with respect to the merchandise. Additionally, under section 351.402(f)(3), if the importer does not provide the certificate prior to liquidation, Commerce presumes that the exporter or producer paid or reimbursed such duties and will deduct

[101] *See id.* at 190.

[102] *See, e.g., Sugar From Mexico: Suspension of Countervailing Duty Investigation,* 79 FR 78044 (December 29, 2014).

[103] *See, e.g., Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Low Enriched Uranium From France,* 67 FR 6680 (February 13, 2002) (requiring certifications of the importer and end user).

[104] *See, e.g., Glycine From the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order,* 77 FR 73426 (December 10, 2012).

[105] Additionally, HSI has the authority to investigate criminal violations related to illegal evasion of payment of required duties, including payment of AD/CV duties. *See, e.g.,* 18 U.S.C. 542.

[106] Commerce does not intend to be restricted by the interpretations or policies set forth by other agencies in interpreting those terms in applying other areas of law.

the applicable AD or CVD duties that the exporter or producer is presumed to have paid on behalf of the importer or reimbursed to the importer. The current regulation, which is largely unchanged as it existed 40 years ago,[107] is otherwise silent regarding the specific filing requirements for the certificate.

Section 405 of the Security and Accountability for Every (SAFE) Port Act of 2006, Public Law 109–347, established the International Data Trade System (ITDS), the purpose of which ''is to eliminate redundant information requirements, to efficiently regulate the flow of commerce, and to effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies.'' Flowing from this, one goal of the ITDS is to encourage and facilitate the transition of paper filing requirements for certain import documentation to electronic format.

Accordingly, Commerce proposes to modify section 351.402(f)(2) to clarify that for all entries subject to AD duties, the importer must file a reimbursement certification in either electronic or paper form in accordance with CBP's requirements, as applicable. Additionally, Commerce proposes to remove the requirement for specific certification language, and instead allow importers to certify to the substance of the certification. Moreover, for ease of administration, Commerce proposes to clarify that a certification is required for each entry of merchandise subject to AD duties imported on or after the date of the first suspension of liquidation.[108] Furthermore, although such certification is required prior to liquidation, Commerce proposes to clarify that CBP may also accept the reimbursement certification in accordance with its protest procedures under 19 U.S.C. 1514. Commerce is also proposing non-substantive restructuring of the regulation.

Other Procedural Amendments—Sections 351.103(d)(1) and 305(d)

Consistent with the substantive proposed rules discussed above, Commerce proposes to adopt necessary changes to two procedural regulations, section 351.103(d)(1) pertaining to letters of appearance and public service lists, and section 351.305(d) pertaining to importer filing requirements for access to business proprietary information in Commerce's proceedings. As discussed above, under revised section 351.225, pertaining to scope inquiries, Commerce proposes to amend section 351.103(d)(1) to reflect that an interested party that submits a scope ruling application need not file an entry of appearance, under section 351.103(d)(1), as that interested party will be placed on the segment-specific service list for that scope inquiry by Commerce. Similarly, as discussed above, under revised section 351.226, pertaining to circumvention inquiries, Commerce proposes to amend section 351.103(d)(1) to reflect that an interested party that submits a request for a circumvention inquiry need not file an entry of appearance under section 351.103(d)(1) to be placed on the segment-specific service list for that circumvention inquiry. We have also made minor amendments to section 351.103(d)(1) to reflect the filing of an ''entry of appearance,'' rather than a ''letter of appearance,'' to more accurately describe Commerce's electronic filing process.

Further, current section 351.305(d) would provide special filing requirements for importers seeking access to business proprietary information in Commerce's proceedings, and would mandate that for scope segments of a proceeding, under existing section 351.225, an applicant seeking access to business proprietary information on behalf of an importer must demonstrate that the party is an importer, or has taken steps to import, the merchandise subject to the scope inquiry. This language would be unchanged with respect to importers in scope inquiries, but we have added similar language for importers in circumvention inquiries, under proposed section 351.226.

Lastly, with respect to covered merchandise inquiries under proposed section 351.227, we propose changes to both sections 351.103(d)(1) and 305(d). Specifically, under revised section 351.103(d)(1), any publicly identified parties in a covered merchandise referral from CBP, under section 517 of the Act, need not file an entry of appearance in the covered merchandise inquiry to be added to the segment-specific service list for that segment of the proceeding. Additionally, under revised section 351.305(d), an applicant for access to business proprietary information on behalf of a party that has been publicly identified by CBP as the importer in a covered merchandise referral is exempt from the requirements of demonstrating that the party is an importer for purposes of a covered merchandise inquiry.

Classifications

Executive Order 12866

OMB has determined that this proposed rule is significant for purposes of Executive Order 12866.

Executive Order 13771

This rule is not subject to the requirements of E.O. 13771 because this rule results in no more than *de minimis* costs.

Paperwork Reduction Act

This proposed rule contains no collection of information subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

Executive Order 13132

This proposed rule does not contain policies with federalism implications as that term is defined in section 1(a) of Executive Order 13132, dated August 4, 1999 (64 FR 43255 (August 10, 1999)).

Regulatory Flexibility Act

The Chief Counsel for Regulation has certified to the Chief Counsel for Advocacy of the Small Business Administration under the provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the proposed rule would not have a significant economic impact on a substantial number of small business entities. A summary of the need for, objectives of, and legal basis for this rule is provided in the preamble, and is not repeated here.

The entities upon which this rulemaking could have an impact include foreign governments, foreign exporters and producers, some of whom are affiliated with U.S. companies, and U.S. importers. Enforcement & Compliance currently does not have information on the number of entities that would be considered small under the Small Business Administration's size standards for small businesses in the relevant industries. However, some of these entities may be considered small entities under the appropriate industry size standards. Although this proposed rule may indirectly impact small entities that are parties to individual AD and CVD proceedings, it

[107] *See* 19 CFR 153.49 (''Reimbursement of dumping duties'') (1979).

[108] Sections 351.402(f)(1(i) and (ii) are unchanged in this proposed rule. Therefore, Commerce will not deduct AD or CVD duties paid or reimbursed with respect to subject merchandise (1) sold before the date of publication of the notice of first suspension of liquidation, and (2) exported before the date of publication of the final AD determination where, before the initiation of the AD investigation in question, the exporter or producer granted a warranty of nonapplicability of AD or CVD duties with respect to the merchandise.

will not have a significant economic impact on any such entities because the proposed rule applies to administrative enforcement actions, only clarifying and establishing streamlined procedures; it does not impose any significant costs on regulated entities. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small business entities. For this reason, an Initial Regulatory Flexibility Analysis is not required and one has not been prepared.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Dated: July 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

For the reasons stated in the preamble, the Department of Commerce proposes to amend 19 CFR part 351 as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

■ 1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

■ 2. Revise paragraph (d)(1) of § 351.103 to read as follows:

§ 351.103 Central Records Unit and Administrative Protective Order and Dockets Unit.

* * * * *

(d) * * *

(1) With the exception of a petitioner filing a petition in an investigation pursuant to § 351.202, an interested party filing a scope ruling application pursuant to § 351.225(c), an interested party filing a request for a circumvention inquiry pursuant to § 351.226(c), and those relevant parties identified by the Customs Service in a covered merchandise referral pursuant to § 351.226, all persons wishing to participate in a segment of a proceeding must file an entry of appearance. The entry of appearance must identify the name of the interested party, how that party qualifies as an interested party under § 351.102(b)(29) and section 771(9) of the Act, and the name of the firm, if any, representing the interested party in that particular segment of the proceeding. All persons who file an entry of appearance and qualify as an interested party will be included in the public service list for the segment of the proceeding in which the entry of appearance is submitted. The entry of appearance may be filed as a cover letter to an application for APO access. If the representative of the interested party is not requesting access to business proprietary information under APO, the entry of appearance must be filed separately from any other document filed with the Department. If the interested party is a coalition or association as defined in subparagraph (A), (E), (F) or (G) of section 771(9) of the Act, the entry of appearance must identify all of the members of the coalition or association.

* * * * *

■ 3. Add paragraph (g) to § 351.203 to read as follows:

§ 351.203 Determination of sufficiency of petition.

* * * * *

(g) *Time limits for filing interested party comments on industry support.* For purposes of sections 702(c)(4)(E) and 732(c)(4)(E) of the Act, the Secretary will consider comments or information on the issue of industry support submitted no later than 5 business days before the date referenced in paragraph (b)(1) of this section by any interested party under section 771(9) of the Act. The Secretary will consider rebuttal comments or information to rebut, clarify, or correct such information on industry support submitted by any interested party no later than two calendar days from the time limit for filing comments.

■ 4. Revise § 351.214 to read as follows:

§ 351.214 New shipper reviews under section 751(a)(2)(B) of the Act.

(a) *Introduction.* Section 751(a)(2)(B) of the Act provides a procedure by which so-called ''new shippers'' can obtain their own individual dumping margin or countervailable subsidy rate on an expedited basis. In general, a new shipper is an exporter or producer that did not export, and is not affiliated with an exporter or producer that did export, to the United States during the period of investigation. Furthermore, section 751(a)(2)(B)(iv) requires that the Secretary make a determination of whether the sales under review are bona fide. This section contains rules regarding requests for new shipper reviews and procedures for conducting such reviews, as well as requirements for determining whether sales are bona fide under section 751(a)(2)(B)(iv) of the Act. In addition, this section contains rules regarding requests for expedited reviews by non-investigated exporters in certain countervailing duty proceedings and procedures for conducting such reviews.

(b) *Request for new shipper review*—(1) *Requirement of sale or export.* Subject to the requirements of section 751(a)(2)(B) of the Act and this section, an exporter or producer may request a new shipper review if it has exported, or sold for export, subject merchandise to the United States and can demonstrate the existence of a bona fide sale.

(2) *Contents of request.* A request for a new shipper review must contain the following:

(i) If the person requesting the review is both the exporter and producer of the merchandise, a certification that the person requesting the review did not export subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(ii) If the person requesting the review is the exporter, but not the producer, of the subject merchandise:

(A) The certification described in paragraph (b)(2)(i) of this section; and

(B) A certification from the person that produced or supplied the subject merchandise to the person requesting the review that that producer or supplier did not export the subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(iii)(A) A certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during the period of investigation, including those not individually examined during the investigation; and

(B) In an antidumping proceeding involving imports from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government;

(iv)(A) A certification from the unaffiliated customer in the United States that it did not purchase the subject merchandise from the producer or exporter during the period of investigation; and

(B) A certification from the unaffiliated customer in the United States that it will provide necessary

information requested by the Secretary regarding its purchase of subject merchandise.

(v) Documentation establishing:

(A) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(B) The volume of that and subsequent shipments, including whether such shipments were made in commercial quantities;

(C) The date of the first sale, and any subsequent sales, to an unaffiliated customer in the United States; and

(D) The circumstances surrounding such sale(s), including but not limited to:

(1) The price of such sales;

(2) Any expenses arising from such sales;

(3) Whether the subject merchandise involved in such sales was resold in the United States at a profit;

(4) Whether such sales were made on an arms-length basis;

(E) Additional documentation regarding the business activities of the producer or exporter, including but not limited to:

(1) The producer or exporter's offers to sell merchandise in the United States;

(2) An identification of the complete circumstance surrounding the producer or exporter's sales to the United States, as well as any home market or third country sales;

(3) In the case of a non-producing exporter, an explanation of the exporter's relationship with its producer/supplier; and

(4) An identification of the producer's or exporter's relationship to the first unrelated U.S. purchaser;

(vi) In the case of a review of a countervailing duty order, a certification that the exporter or producer has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.

(c) *Deadline for requesting review.* An exporter or producer may request a new shipper review within one year of the date referred to in paragraph (b)(2)(v)(A) of this section.

(d) *Initiation of new shipper review*—(1) *In general.* If the requirements for a request for new shipper review under paragraph (b) of this section are satisfied, the Secretary will initiate a new shipper review under this section in the calendar month immediately following the anniversary month or the semiannual anniversary month if the request for the review is made during the 6–month period ending with the end of the anniversary month or the semiannual anniversary month (whichever is applicable).

(2) *Semiannual anniversary month.* The semiannual anniversary month is the calendar month that is 6 months after the anniversary month.

(3) *Example.* An order is published in January. The anniversary month would be January, and the semiannual anniversary month would be July. If the Secretary received a request for a new shipper review at any time during the period February–July, the Secretary would initiate a new shipper review in August. If the Secretary received a request for a new shipper review at any time during the period August–January, the Secretary would initiate a new shipper review in February.

(4) *Exception.* If the Secretary determines that the requirements for a request for new shipper review under paragraph (b) of this section have not been satisfied, the Secretary will reject the request and provide a written explanation of the reasons for the rejection.

(e) *Suspension of liquidation.* When the Secretary initiates a new shipper review under this section, the Secretary will direct the Customs Service to suspend or continue to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer at the applicable cash deposit rate.

(f) *Rescission of new shipper review*—(1) *Withdrawal of request for review.* The Secretary may rescind a new shipper review under this section, in whole or in part, if a producer or exporter that requested a review withdraws its request not later than 60 days after the date of publication of notice of initiation of the requested review.

(2) *Absence of entry and sale to an unaffiliated customer.* The Secretary may rescind a new shipper review, in whole or in part, if the Secretary concludes that:

(i) As of the end of the normal period of review referred to in paragraph (g) of this section, there has not been an entry and sale to an unaffiliated customer in the United States of subject merchandise; and

(ii) An expansion of the normal period of review to include an entry and sale to an unaffiliated customer in the United States of subject merchandise would be likely to prevent the completion of the review within the time limits set forth in paragraph (i) of this section;

(3) *Absence of bona fide sale to an unaffiliated customer.* The Secretary may rescind a new shipper review, in whole or in part, if the Secretary concludes that:

(i) Information that the Secretary considers necessary to conduct a bona fide sale analysis is not on the record; or

(ii) The producer or exporterseeking a new shipper review has failed to demonstrate to the satisfaction of the Secretary the existence of a bona fide sale to an unaffiliated customer.

(4) *Notice of Rescission.* If the Secretary rescinds a new shipper review (in whole or in part), the Secretary will publish in the **Federal Register** notice of ''Rescission of Antidumping (Countervailing Duty) New Shipper Review'' or, if appropriate, ''Partial Rescission of Antidumping (Countervailing Duty) New Shipper Review.''

(g) *Period of review*—(1) *Antidumping proceeding*—(i) *In general.* Except as provided in paragraph (g)(1)(ii) of this section, in an antidumping proceeding, a new shipper review under this section normally will cover, as appropriate, entries, exports, or sales during the following time periods:

(A) If the new shipper review was initiated in the month immediately following the anniversary month, the twelve-month period immediately preceding the anniversary month; or

(B) If the new shipper review was initiated in the month immediately following the semiannual anniversary month, the period of review will be the six-month period immediately preceding the semiannual anniversary month.

(ii) *Exceptions.* (A) If the Secretary initiates a new shipper review under this section in the month immediately following the first anniversary month, the review normally will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first anniversary month.

(B) If the Secretary initiates a new shipper review under this section in the month immediately following the first semiannual anniversary month, the review normally will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first semiannual anniversary month.

(2) *Countervailing duty proceeding.* In a countervailing duty proceeding, the period of review for a new shipper review under this section will be the same period as that specified in § 351.213(e)(2) for an administrative review.

(h) *Procedures.* The Secretary will conduct a new shipper review under this section in accordance with § 351.221.

(i) *Time limits*—(1) *In general.* Unless the time limit is waived under paragraph (j)(3) of this section, the Secretary will issue preliminary results of review (see § 351.221(b)(4)) within 180 days after the date on which the new shipper review was initiated, and final results of review (see § 351.221(b)(5)) within 90 days after the date on which the preliminary results were issued.

(2) *Exception.* If the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(j) *Multiple reviews.* Notwithstanding any other provision of this subpart, if a review (or a request for a review) under § 351.213 (administrative review), § 351.214 (new shipper review), § 351.215 (expedited antidumping review), or § 351.216 (changed circumstances review) covers merchandise of an exporter or producer subject to a review (or to a request for a review) under this section, the Secretary may, after consulting with the exporter or producer:

(1) Rescind, in whole or in part, a review in progress under this subpart;

(2) Decline to initiate, in whole or in part, a review under this subpart; or

(3) Where the requesting producer or exporter agrees in writing to waive the time limits of paragraph (i) of this section, conduct concurrent reviews, in which case all other provisions of this section will continue to apply with respect to the exporter or producer.

(k) *Determinations based on bona fide sales.* In determining whether the U.S. sales of an exporter or producer made during the period covered by the review are bona fide, the Secretary shall consider the factors identified at section 752(a)(2)(B)(iv) of the Act. In accordance with section 751(a)(2)(B)(iv)(VII) of the Act, the Secretary shall consider the following factors:

(1) Whether the producer, exporter, or customer was established for purposes of the sale(s) in question after the imposition of the relevant antidumping or countervailing duty order;

(2) Whether the producer, exporter, or customer has lines of business unrelated to the subject merchandise;

(3) Whether there is an established history of duty evasion with respect to new shipper reviews or circumvention under the relevant antidumping or countervailing duty order;

(4) Whether there is an established history of duty evasion with respect to new shipper reviews or circumvention under any antidumping or countervailing duty orders in the same or similar industry;

(5) The quantity of sales; and

(6) Any other factor that the Secretary determines to be relevant with respect to the future selling behavior of the producer or exporter, including any other indicia that the sale was not commercially viable.

(l) *Expedited reviews in countervailing duty proceedings for noninvestigated exporters*—(1) *Request for review.* If, in a countervailing duty investigation, the Secretary limited the number of exporters or producers to be individually examined under section 777A(e)(2)(A) of the Act, an exporter that the Secretary did not select for individual examination or that the Secretary did not accept as a voluntary respondent (see § 351.204(d)) may request a review under this paragraph (l). An exporter must submit a request for review within 30 days of the date of publication in the **Federal Register** of the countervailing duty order. A request must be accompanied by a certification that:

(i) The requester exported the subject merchandise to the United States during the period of investigation;

(ii) The requester is not affiliated with an exporter or producer that the Secretary individually examined in the investigation; and

(iii) The requester has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.

(2) *Initiation of review*—(i) *In general.* The Secretary will initiate a review in the month following the month in which a request for review is due under paragraph (l)(1) of this section.

(ii) *Example.* The Secretary publishes a countervailing duty order on January 15. An exporter would have to submit a request for a review by February 14. The Secretary would initiate a review in March.

(3) *Conduct of review.* The Secretary will conduct a review under this paragraph (l) in accordance with the provisions of this section applicable to new shipper reviews, subject to the following exceptions:

(i) The period of review will be the period of investigation used by the Secretary in the investigation that resulted in the publication of the countervailing duty order (*see* § 351.204(b)(2));

(ii) The final results of a review under this paragraph (l) will not be the basis for the assessment of countervailing duties; and

(iii) The Secretary may exclude from the countervailing duty order in question any exporter for which the Secretary determines an individual net countervailable subsidy rate of zero or de minimis (see § 351.204(e)(1)), provided that the Secretary has verified the information on which the exclusion is based.

(m) *Exception from assessment in regional industry cases.* For procedures relating to a request for the exception from the assessment of antidumping or countervailing duties in a regional industry case, see § 351.212(f).

■ 5. Revise § 351.225 to read as follows:

§ 351.225 Scope rulings.

(a) *Introduction.* Questions sometimes arise as to whether a particular product is covered by the scope of an antidumping or countervailing duty order. Such questions may arise for a variety of reasons given that the description of the merchandise subject to the scope is written in general terms. The Secretary will initiate and conduct a scope inquiry and issue a scope ruling to determine whether or not a product is covered by the scope of an order at the request of an interested party or on the Secretary's initiative. A scope ruling that a product is within the scope of the order is a determination that the product has always been within the scope of the order. This section contains rules and procedures regarding scope rulings, including scope ruling applications, scope inquiries, and standards used in determining whether a product is covered by the scope of an order. Unless otherwise specified, the procedures as described in subpart C of this part (§§ 351.301 through 351.308 and §§ 351.312 through 351.313) apply to this section.

(b) *Self-initiation of a scope inquiry.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is covered by the scope of an order, the Secretary may initiate a scope inquiry and notify, electronically or otherwise, all parties on the annual inquiry service list (*see* paragraph (n) of this section).

(c) *Scope ruling application*—(1) *Contents.* An interested party may submit a scope ruling application

requesting that the Secretary conduct a scope inquiry to determine whether a product, which is or has been in actual production by the time of the filing of the application, is covered by the scope of an order. The Secretary will make available a scope ruling application, which the applicant must fully complete and serve in accordance with the requirements of paragraph (n) of this section. To the extent reasonably available to the applicant, the scope ruling application must include the requested information under paragraph (c)(2) of this section and relevant supporting documentation.

(2) *Requested information.* (i) A detailed physical description of the product, including:

(A) The characteristics (including technical, physical, chemical or otherwise) of the product;

(B) The uses of the product;

(C) The product's tariff classification under the Harmonized Tariff Schedule of the United States;

(D) Clear and legible photographs, schematic drawings, specifications, standards, marketing materials, and any other exemplars providing a visual depiction of the product; and

(E) A description of parts, materials, and the production process employed in the production of the product.

(ii) A concise public description of the product and public identification of the name and address of the producer, exporter, and importer of the product, if reasonably available to the applicant.

(iii) A narrative history of the production of the product at issue, including a history of earlier versions of the product if this is not the first model of the product.

(iv) The volume of annual production of the product for the most recently completed fiscal year.

(v) If the product has been imported into the United States as of the date of the filing of the scope ruling application:

(A) An explanation as to whether an entry of the product has been classified as subject to an order; and

(B) Relevant documentation, including dated copies of the Customs and Border Protection entry summary forms (or electronic entry processing system documentation) identifying the product upon importation and other related commercial documents, including, but not limited to, invoices and contracts, which reflect the details surrounding the sale and purchase of that imported product.

(vi) A statement as to whether the product undergoes any additional processing in the United States after importation, or in a third country before importation, and a statement as to the relevance of this processing to the scope of the order.

(vii) The applicant's statement as to whether the product is covered by the scope of the order, including:

(A) An explanation with specific reference to paragraph (j) and (k) of this section, as appropriate;

(B) Citations to any applicable legal authority; and

(C) Whether there are companion orders as described in paragraph (m)(2) of this section.

(viii) Factual information supporting the applicant's position, including full copies of prior scope determinations and relevant excerpts of other documents identified in paragraph (k)(1) of this section.

(d) *Initiation of a scope inquiry based on a scope ruling application.* (1) Within 30 days after the filing of a scope ruling application, the Secretary will determine whether to accept or reject the scope ruling application. If the Secretary determines that a scope ruling application is incomplete or otherwise unacceptable, the Secretary may reject the scope ruling application and will provide a written explanation of the reasons for the rejection. If the scope ruling application is rejected, the applicant may resubmit the full application at any time, with all identified deficiencies corrected.

(2) If the Secretary does not reject the scope ruling application, it will be deemed accepted 31 days after filing and the scope inquiry will be deemed initiated.

(e) *Time limits*—(1) *In general.* The Secretary shall issue a final scope ruling within 120 days after the date on which the scope inquiry was initiated under paragraph (b) or (d) of this section. (2) *Extension.* The Secretary may extend the deadline in paragraph (e)(1) of this section by no more than 180 days if the Secretary determines that good cause exists to warrant an extension. Situations in which good cause has been demonstrated may include, but are not limited to, the following:

(i) If the Secretary has issued questionnaires to the applicant or other interested parties; received responses to those questionnaires; and determined that an extension is warranted to request further information or consider and address the parties' responses on the record adequately; or

(ii) The Secretary has issued a preliminary scope ruling (*see* paragraph (g) of this section).

(f) *Scope inquiry procedures.* (1) Within 20 days of the Secretary's self-initiation of a scope inquiry under paragraph (b) of this section, interested parties are permitted one opportunity to submit comment and factual information addressing the self-initiation. Within 10 days of the filing of such comments, any interested party is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted by the other interested parties.

(2) Within 20 days of the initiation of a scope inquiry under paragraph (d)(2) of this section, an interested party other than the applicant is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information contained in the scope ruling application. Within 10 days of the filing of such rebuttal, clarification, or correction, the applicant is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

(3) Following initiation of a scope inquiry under paragraph (b) or (d) of this section, the Secretary may issue questionnaires and verify submissions received, where appropriate. The Secretary may limit issuance of questionnaires to a reasonable number of respondents. Questionnaire responses are due on the date specified by the Secretary. Within 10 days after a questionnaire response has been filed with the Secretary, an interested party other than the original submitter is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within five days of the filing of such rebuttal, clarification, or correction, the original submitter is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

(4) If the Secretary issues a preliminary scope ruling under paragraph (g) of this section, which is not issued concurrently with the initiation of the scope inquiry, the Secretary will establish a schedule for the filing of scope comments and rebuttal comments. Unless otherwise specified, any interested party may submit scope comments within 10 days after the issuance of the preliminary scope ruling, and any interested party may submit rebuttal comments within 5 days thereafter. Unless otherwise specified, no factual information will be accepted in the scope or rebuttal comments.

(5) If the Secretary issues a preliminary scope ruling concurrently with the initiation of a scope inquiry under paragraph (g) of this section, paragraphs (f)(1) through (4) of this section will not apply. In such a situation, the Secretary will establish appropriate procedures on a case-specific basis.

(6) If the Secretary determines it is appropriate to do so, the Secretary may rescind a scope inquiry under this section.

(7) The Secretary may alter any deadlines under this paragraph or establish a separate schedule for the filing of comments and/or factual information during the scope inquiry, as appropriate.

(g) *Preliminary scope ruling.* The Secretary may issue a preliminary scope ruling, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product subject to a scope inquiry is covered by the scope of the order. In determining whether to issue a preliminary scope ruling, the Secretary may consider the complexity of the issues and arguments raised in the scope inquiry. The Secretary may issue a preliminary scope ruling concurrently with the initiation of a scope inquiry under paragraph (b) or (d) of this section.

(h) *Final scope ruling.* The Secretary will issue a final scope ruling as to whether the product that is the subject of the scope inquiry is covered by the scope of the order, including an explanation of the factual and legal conclusions on which the final scope ruling is based. The Secretary will promptly convey a copy of the final scope ruling in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act to all parties to the proceeding (*see* § 351.102(b)(36)).

(i) *Other segments of the proceeding.* (1) Notwithstanding any other provision of this section, the Secretary may, but is not required to, address scope issues in another segment of the proceeding, such as an administrative review under § 351.213, a circumvention inquiry under § 351.226, or a covered merchandise inquiry under § 351.227, without initiating or conducting a scope inquiry under this section. For example, the Secretary may forego or rescind a scope inquiry under this section and determine whether the product at issue is covered by the scope of the order in another segment of the proceeding (including another scope inquiry, *see* paragraph (m)(1) of this section).

(2) Notwithstanding any other provision of this section, the Secretary may modify the deadlines of the scope inquiry to align with the deadlines of another segment of the proceeding or make no changes to its scope inquiry deadlines.

(3) During the pendency of a scope inquiry or upon issuance of a final scope ruling under paragraph (h) of this section, the Secretary may take any further action, as appropriate, with respect to another segment of the proceeding. For example, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the scope inquiry for purpose of an administrative review under § 351.213.

(j) *Country of origin determinations.* In considering whether a product is covered by the scope of the order at issue, the Secretary may need to determine the country of origin of the product. To make such a determination, the Secretary may use any reasonable method and is not bound by the determinations of any other agency, including tariff classification and country of origin marking rulings issued by the Customs Service. In determining the country of origin, the Secretary may conduct a substantial transformation analysis that considers relevant factors that arise on a case-by-case basis, including:

(1) Whether the processed downstream product is a different class or kind of merchandise than the upstream product;

(2) The characteristics (including technical, physical, chemical or otherwise) and intended end-use of the product;

(3) The cost of production/value added of further processing in the third country or countries;

(4) The nature and sophistication of processing in the third country or countries; and

(5) The level of investment in the third country or countries.

In conducting a country of origin determination, the Secretary also may consider where the essential component of the product is produced or where the essential characteristics of the product are imparted.

(k) *Scope rulings.* In determining whether a product is covered by the scope of the order at issue, the Secretary will consider the language of the scope and may make its determination on this basis alone if the language of the scope, including the descriptions of merchandise expressly excluded from the scope, is dispositive.

(1) In considering the language of the scope, at the Secretary's discretion, the following may also be considered:

(i) The descriptions of the merchandise contained in the petition;

(ii) The descriptions of the merchandise contained in the initial investigation;

(iii) Determinations of the Secretary, including, but not limited to, prior scope rulings, memoranda, or clarifications; and

(iv) Determinations of the Commission, including reports issued pursuant to the Commission's initial investigation.

(2) If the Secretary determines that the above sources are not dispositive, the Secretary will then further consider:

(i) The characteristics (including technical, physical, chemical or otherwise) of the product;

(ii) The expectations of the ultimate purchasers;

(iii) The ultimate use of the product;

(iv) The channels of trade in which the product is sold; and

(v) The manner in which the product is advertised and displayed.

(3) If merchandise contains two or more components and the product at issue in the scope inquiry is a component of that merchandise, the Secretary will first analyze the scope language and the criteria above to determine if the product, standing alone, would be covered by an order. If the Secretary determines that a component product would otherwise be covered by the scope of an order, the Secretary next will examine the same criteria to determine if the component product's inclusion in the larger merchandise is directly addressed by the scope of the order for purposes of inclusion or exclusion from the coverage of the scope. Finally, if the scope language and the criteria above do not address that situation, then the Secretary will consider, as appropriate, relevant factors that may arise on a product-specific basis to determine whether the component product's inclusion in the larger merchandise results in its exclusion from the scope of the order, or leaves it within the coverage of the scope. Such relevant factors include:

(i) The practicability of separating the in-scope component for repackaging or resale;

(ii) The measurable value of the in-scope component as compared to the measurable value of the merchandise as a whole; and

(iii) The ultimate use or function of the in-scope component relative to the ultimate use or function of the merchandise as a whole.

(l) *Suspension of liquidation.* (1) When the Secretary initiates a scope inquiry under paragraph (b) or (d) of

this section, the Secretary will notify the Customs Service of the initiation and direct the Customs Service to continue the suspension of liquidation of entries of products subject to the scope inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order, until appropriate liquidation instructions are issued.

(2) If the Secretary issues a preliminary scope ruling under paragraph (g) of this section that the product at issue is covered by the scope of the order, the Secretary will direct the Customs Service as follows:

(i) To continue the suspension of liquidation of previously suspended entries of the product at issue as directed under paragraph (l)(1) of this section; and

(ii) To suspend liquidation of all other unliquidated entries of the product at issue, and apply the applicable cash deposit rate under the order to those entries.

(3) If the Secretary issues a final scope ruling under paragraph (h) of this section that the product at issue is covered by the scope of the order, the Secretary will direct the Customs Service as follows:

(i) To continue the suspension of liquidation of entries suspended as directed under paragraph (l)(1) and/or (l)(2) of this section (including entries of the product at issue that are subject to suspension of liquidation as a result of another segment of a proceeding, such as an administrative review under § 351.213 or a circumvention inquiry under § 351.226) and apply the applicable cash deposit rate under the order until appropriate liquidation instructions are issued pursuant to §§ 351.212 and 351.213; and

(ii) To suspend liquidation of all other unliquidated entries of the product at issue that are not otherwise subject to suspension of liquidation, and apply the applicable cash deposit rate under the order until appropriate liquidation instructions are issued pursuant to §§ 351.212 and 351.213.

(4) If the Secretary issues a final scope ruling under paragraph (h) of this section that the product is not covered by the scope of the order, and entries of the product at issue are not otherwise subject to suspension of liquidation as a result of another segment of a proceeding, such as a circumvention inquiry under § 351.226 or a covered merchandise inquiry under § 351.227, the Secretary will direct the Customs Service to terminate the suspension of liquidation and refund any cash deposits for such entries.

(m) *Applicability of scope rulings; companion orders*—(1) *In general.* To the extent practicable, the Secretary normally will initiate and conduct a single scope inquiry and issue a single scope ruling for an order under this section with respect to all products with the identical physical description from the same country of origin as the particular product at issue, regardless of producer, exporter, or importer. If the Secretary has previously issued a scope ruling for an order with respect to a particular product, the Secretary may apply that scope ruling to all products with the identical physical description from the same country of origin as the particular product at issue, regardless of producer, exporter, or importer, without initiating or conducting a new scope inquiry under this section. In such instances, the requirements of paragraph (h) of this section will apply.

(2) *Companion antidumping and countervailing duty orders.* If there are companion antidumping and countervailing duty orders covering the same merchandise from the same country of origin, the requesting interested party under paragraph (c) of this section must file the scope ruling application pertaining to both orders only on the record of the antidumping duty proceeding. Should the Secretary determine to initiate a scope inquiry under paragraph (b) or (d) of this section, the Secretary will initiate and conduct a single inquiry with respect to the merchandise at issue for both orders only on the record of the antidumping proceeding. Once the Secretary issues a final scope ruling on the record of the antidumping duty proceeding, the Secretary will include a copy of that scope ruling on the record of the countervailing duty proceeding.

(n) *Service of scope ruling application; annual inquiry service list; entry of appearance.* (1) The requirements of § 351.303(f) apply to this section, except that an interested party that submits a scope ruling application under paragraph (c) of this section must serve a copy of the application on all persons on the annual inquiry service list for that order, as well as the companion order, if any, as described in paragraph (m)(2) of this section. If a scope ruling application is rejected and resubmitted pursuant to paragraph (d)(1) of this section, service of the resubmitted application is not required under this paragraph, unless otherwise specified.

(2) For purposes of this section, the ''annual inquiry service list'' will include the petitioner(s) and those parties that file a request for inclusion on the annual inquiry service list for a proceeding, in accordance with the Secretary's established procedures. (3) A new ''annual inquiry service list'' will be established on a yearly basis. Parties filing a request for inclusion on that list must file a request during the anniversary month of the publication of the antidumping or countervailing duty order. Only the petitioner will be automatically placed on the new annual inquiry service list once the previous year's list has been replaced.

(4) Once a scope ruling application is accepted by the Secretary, a segment-specific service list will be established and the requirements of § 351.303(f) will apply. Parties other than the scope ruling applicant that wish to participate in the scope inquiry must file an entry of appearance in accordance with § 351.103(d)(1).

(o) *Publication of list of final scope rulings.* On a quarterly basis, the Secretary will publish in the **Federal Register** a list of final scope rulings issued within the previous three months. This list will include the case name, and a brief description of the ruling. The Secretary also may include complete public versions of its scope rulings on its website, should the Secretary determine such placement is warranted.

(p) *Suspended investigations; suspension agreements.* The Secretary may, as appropriate, apply the procedures set forth in this section in determining the scope of a suspended investigation or a suspension agreement (*see* § 351.208).

■ 6. Add § 351.226 as follows:

§ 351.226 Circumvention inquiries.

(a) *Introduction.* Section 781 of the Act addresses the circumvention of antidumping and countervailing duty orders. This provision recognizes that circumvention seriously undermines the effectiveness of the remedies provided by the antidumping and countervailing duty proceedings, and frustrates the purposes for which these laws were enacted. Section 781 of the Act allows the Secretary to apply antidumping and countervailing duty orders in such a way as to prevent circumvention by including within the scope of the order four distinct categories of merchandise. The Secretary will initiate and conduct a circumvention inquiry at the request of an interested party or on the Secretary's initiative, and issue a circumvention determination as provided for under section 781 of the Act and the rules and procedures in this section. Unless otherwise specified, the procedures as described in subpart C of

this part (§§ 351.301 through 351.308 and §§ 351.312 through 351.313) apply to this section.

(b) *Self-initiation of circumvention inquiry.* If the Secretary determines from available information that an inquiry is warranted into the question of whether the elements necessary for a circumvention determination under section 781 of the Act exist, the Secretary may initiate a circumvention inquiry and publish a notice of initiation in the **Federal Register**.

(c) *Circumvention inquiry request*—(1) *In general.* An interested party may submit a request for a circumvention inquiry that alleges that the elements necessary for a circumvention determination under section 781 of the Act exist and that is accompanied by information reasonably available to the interested party supporting these allegations. The circumvention inquiry request must be served in accordance with the requirements of paragraph (n) of this section.

(2) *Contents of request.* To the extent reasonably available to the requestor, a circumvention inquiry request must include the requested information under paragraph (c)(1) of this section and the following:

(i) A detailed physical description of the merchandise allegedly circumventing the antidumping or countervailing duty order, including:

(A) The characteristics (including technical, physical, chemical or otherwise) of the product;

(B) The uses of the product;

(C) The product's tariff classification under the Harmonized Tariff Schedule of the United States;

(D) Clear and legible photographs, schematic drawings, specifications, standards, marketing materials, and any other exemplars providing a visual depiction of the product; and

(E) A description of parts, materials, and the production process employed in the production of the product.

(ii) A concise public description of the product and public identification of the name and address of any producer, exporter, and importer of the product allegedly circumventing the antidumping or countervailing duty order if reasonably available to the requesting interested party. If the full universe of parties allegedly circumventing the order(s) is unknown, then examples are sufficient. Furthermore, this provision is not intended to restrict the inclusion of business proprietary information in the request where appropriate.

(iii) A statement of the requestor's position as to the nature of the alleged circumvention under section 781 of the Act, such as a description of the procedures, channels of trade, and foreign countries involved (including a description of the processes occurring in each country), as appropriate.

(iv) A statement of the requestor's position as to whether the circumvention inquiry, if initiated, should be conducted on a country-wide basis.

(iv) Factual information supporting this position, including import and export data relevant to the merchandise allegedly circumventing the antidumping or countervailing duty order.

(d) *Initiation of a circumvention inquiry based on a request.* Within 20 days after the filing of a request for a circumvention inquiry, the Secretary will determine whether to accept or reject the request. If it is not practicable to determine whether to accept or reject a request within 20 days, the Secretary may extend that deadline by an additional 15 days.

(1) If the Secretary determines that the request is incomplete or otherwise unacceptable, the Secretary may reject the request, and will provide a written explanation of the reasons for the rejection. If the request is rejected, the requestor may resubmit the full request at any time, with all identified deficiencies corrected.

(2) If the Secretary determines upon review of a request for a circumvention inquiry that a scope ruling is warranted before the Secretary can conduct a circumvention analysis, the Secretary may either, in accord with § 351.225(i)(1), initiate the circumvention inquiry and address scope issues in the context of the circumvention inquiry, or defer initiation of the circumvention inquiry pending the completion of any ongoing or new segment of the proceeding addressing the scope issue. When initiation is deferred pending another segment of the proceeding, if the result of that other segment is that the product at issue is not covered by the scope of the antidumping and/or countervailing duty order(s) at issue, the Secretary may immediately initiate the circumvention inquiry upon the issuance of the final decision in that other segment.

(3) If the Secretary determines that a request for a circumvention inquiry satisfies the requirements of paragraph (c) of this section, the Secretary will accept the request and initiate a circumvention inquiry. The Secretary will publish a notice of initiation in the **Federal Register**.

(e) *Time limits*—(1) *Preliminary Determination.* The Secretary will issue a preliminary determination under paragraph (g)(1) of this section no later than 150 days from the date of publication of the notice of initiation of a circumvention inquiry under paragraph (b) or (d) of this section.

(2) *Final Determination.* In accordance with section 781(f) of the Act, the Secretary shall, to the maximum extent practicable, issue a final determination under paragraph (g)(2) of this section no later than 300 days from the date of publication of the notice of initiation of a circumvention inquiry under paragraph (b) or (d) of this section. If the Secretary concludes that the inquiry is extraordinarily complicated and additional time is necessary to issue a final circumvention determination, then the Secretary may extend the 300-day deadline by no more than 65 days.

(f) *Circumvention inquiry procedures.* (1) Within 20 days of the publication of the Secretary's self-initiation of a circumvention inquiry under paragraph (b) of this section, interested parties are permitted one opportunity to submit comment and factual information addressing the self-initiation. Within 10 days of the filing of such comments, any interested party is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted by the other interested parties.

(2) Within 20 days of the publication of the initiation of a circumvention inquiry under paragraph (d) of this section, an interested party other than the requestor is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information contained in the request. Within 10 days of the filing of such rebuttal, clarification, or correction, the requestor is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information contained in the interested party's rebuttal, clarification or correction.

(3) Following initiation of a circumvention inquiry under paragraph (b) or (d) of this section, the Secretary may issue questionnaires and verify submissions received, where appropriate. The Secretary may limit issuance of questionnaires to a reasonable number of respondents. Questionnaire responses are due on the date specified by the Secretary. Within 10 days after a questionnaire response has been filed with the Secretary, an interested party other than the original submitter is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within 5 days

of the filing of such rebuttal, clarification, or correction, the original submitter is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information contained in the interested party's rebuttal, clarification or correction.

(4) If the Secretary issues a preliminary circumvention determination under paragraph (g)(1) of this section, which is not issued concurrently with the initiation of the circumvention inquiry, the Secretary will establish a schedule for the filing of comments and rebuttal comments. Unless otherwise specified, any interested party may submit comments within 10 days after the issuance of the preliminary circumvention determination, and any interested party may submit rebuttal comments within 5 days thereafter. Unless otherwise specified, no factual information will be accepted in the comments or rebuttal comments.

(5) If the Secretary issues a preliminary circumvention determination concurrently with the initiation of the circumvention inquiry under paragraph (g)(1) of this section, paragraphs (g)(1) through (4) will not apply. In such a situation, the Secretary will establish appropriate procedures on a case-specific basis.

(6) Notwithstanding any other provision of this section, the Secretary may forego or rescind a circumvention inquiry, in whole or in part, under this section for the following reasons:

(i) The requestor timely withdraws its request for a circumvention inquiry under paragraph (c) of this section;

(ii) The Secretary issues a final determination in another segment of a proceeding, and has determined that the merchandise at issue in the circumvention inquiry is covered by the scope of the antidumping or countervailing duty order;

(iii) Where the Secretary has initiated a circumvention inquiry under paragraph (b) or (d) of this section to examine circumvention under two or more provisions under paragraphs (h), (i), (j), or (k) of this section, and determines that it is not necessary to issue a final circumvention determination with respect to one of those paragraphs. For example, if the Secretary initiates a circumvention inquiry to examine whether merchandise is altered in minor respects under paragraph (j) of this section or later-developed merchandise under paragraph (k) of this section, the Secretary may rescind the inquiry in part to address only one of those provisions.

(7) The Secretary may alter any deadlines under this paragraph or establish a separate schedule for the filing of comments and/or factual information during the circumvention inquiry, as appropriate. Notwithstanding any other provision of this section, the Secretary may modify the deadlines of the circumvention inquiry to align with the deadlines of another segment of the proceeding or make no changes to its inquiry deadlines.

(8)(i) The Secretary will notify the Commission in writing of the proposed inclusion of products in an order prior to issuing a final determination under paragraph (g)(2) of this section based on a determination under:

(A) Section 781(a) of the Act (paragraph (h) of this section) with respect to merchandise completed or assembled in the United States (other than minor completion or assembly);

(B) Section 781(b) of the Act (paragraph (i) of this section) with respect to merchandise completed or assembled in other foreign countries; or

(C) Section 781(d) of the Act (paragraph (k) of this section) with respect to later-developed products that incorporate a significant technological advance or significant alteration of an earlier product.

(ii) If the Secretary notifies the Commission under paragraph (f)(7)(i) of this section, upon the written request of the Commission, the Secretary will consult with the Commission regarding the proposed inclusion, and any such consultation will be completed within 15 days after the date of such request. If, after consultation, the Commission believes that a significant injury issue is presented by the proposed inclusion of a product within an order, the Commission may provide written advice to the Secretary as to whether the inclusion would be inconsistent with the affirmative injury determination of the Commission on which the order is based.

(g) *Circumvention determinations*—(1) *Preliminary determination.* The Secretary will issue a preliminary determination, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the elements necessary for a circumvention determination under section 781 of the Act exist. The preliminary determination will be published in the **Federal Register**. The Secretary may publish notice of a preliminary determination concurrently with the notice of initiation of a circumvention inquiry under paragraph (b) or (d) of this section.

(2) *Final determination.* The Secretary will issue a final determination as to whether the elements necessary for a circumvention determination under section 781 of the Act exist, in which case the merchandise at issue will be included within the scope of the order. As part of its determination, the Secretary will include an explanation of the factual and legal conclusions on which the final determination is based. The final determination will be published in the **Federal Register**. Promptly after publication, the Secretary will convey a copy of the final determination in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act to all parties to the proceeding (see § 351.102(b)(36)).

(h) *Products completed or assembled in the United States.* Under section 781(a) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order imported parts or components referred to in section 781(a)(1)(B) of the Act that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect. In determining the value of parts or components (including such purchases from another person) under section 781(a)(1)(D) of the Act, or of processing performed (including by another person) under section 781(a)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(e) of the Act—or, in the case of nonmarket economies, on the basis of section 773(c) of the Act.

(i) *Products completed or assembled in other foreign countries.* Under section 781(b) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order, at any time such order is in effect, imported merchandise completed or assembled in a foreign country other than the country to which the order applies. In determining the value of parts or components (including such purchases from another person) under section 781(b)(1)(D) of the Act, or of processing performed (including by another person) under section 781(b)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(e) of the Act—or, in the case of nonmarket economies, on the basis of section 773(c) of the Act.

(j) *Minor alterations of merchandise.* Under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or

appearance in minor respects. The Secretary may consider such criteria including, but not limited to, the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products. The Secretary also may consider the circumstances under which the products enter the United States, including but not limited to the timing of the entries and the quantity of merchandise entered during the circumvention review period.

(k) *Later-developed merchandise.* In determining whether later-developed merchandise is within the scope of an antidumping or countervailing duty order, the Secretary will apply section 781(d) of the Act. In determining whether merchandise is ''later-developed'' the Secretary will examine whether the merchandise at issue was commercially available at the time of the initiation of the underlying antidumping or countervailing duty investigation.

(l) *Suspension of liquidation.* (1) When the Secretary publishes a notice of initiation of a circumvention inquiry under paragraph (b) or (d) of this section, the Secretary will notify the Customs Service of the initiation and direct the Customs Service to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order, until appropriate liquidation instructions are issued.

(2) If the Secretary issues an affirmative preliminary determination under paragraph (g)(1) of this section, the Secretary will direct the Customs Service as follows:

(i) To continue the suspension of liquidation of previously suspended entries of the product at issue as directed under paragraph (l)(1) of this section; and

(ii) To suspend liquidation of all other unliquidated entries of the product at issue, and apply the applicable cash deposit rate under the order to those entries.

(3) If the Secretary issues an affirmative final determination under paragraph (g)(2) of this section, the Secretary will direct the Customs Service as follows:

(i) To continue the suspension of liquidation of entries suspended as directed under paragraph (l)(1) and/or (l)(2) of this section (including entries of the product at issue that are subject to suspension of liquidation as a result of another segment of a proceeding, such as an administrative review under § 351.213) and apply the applicable cash deposit rate under the order until appropriate liquidation instructions are issued pursuant to §§ 351.212 and 351.213; and

(ii) To suspend liquidation of all other unliquidated entries of the product at issue that are not otherwise subject to suspension of liquidation, and apply the applicable cash deposit rate under the order until appropriate liquidation instructions are issued pursuant to §§ 351.212 and 351.213.

(4) If the Secretary issues a negative final determination under paragraph (g)(2) of this section, and entries of the product are not otherwise subject to suspension of liquidation as a result of another segment of a proceeding, such as a covered merchandise inquiry under § 351.227, the Secretary will order the Customs Service to terminate the suspension of liquidation and refund any cash deposits for such entries.

(m) *Applicability of circumvention determination; other segments of the proceeding; companion orders*—(1) *Applicability of circumvention determination.* In conducting a circumvention inquiry under this section, the Secretary shall consider, based on the available record evidence, whether the circumvention determination should be applied on a country-wide basis.

(2) *Other segments of the proceeding.* During the pendency of a circumvention inquiry or upon issuance of a final circumvention determination under paragraph (g)(2) of this section, the Secretary may take any further action, as appropriate, with respect to another segment of the proceeding. For example, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the circumvention inquiry for purpose of an administrative review under § 351.213.

(3) *Companion antidumping and countervailing duty orders.* If there are companion antidumping and countervailing duty orders covering the same merchandise from the same country of origin, the requesting interested party under paragraph (c) of this section must file the request pertaining to both orders only on the record of the antidumping duty proceeding. Should the Secretary determine to initiate a circumvention inquiry under paragraph (b) or (d) of this section, the Secretary will initiate and conduct a single inquiry with respect to the merchandise at issue for both orders only on the record of the antidumping proceeding. Once the Secretary issues a final circumvention determination on the record of the antidumping duty proceeding, the Secretary will include a copy of that determination on the record of the countervailing duty proceeding.

(n) *Service of circumvention inquiry request; annual inquiry service list; entry of appearance.* (1) The requirements of § 351.303(f) apply to this section, except that an interested party that submits a circumvention inquiry request under paragraph (c) of this section must serve a copy of that inquiry request on all persons on the annual inquiry service list for that order, as well as the companion order, if any, as described in paragraph (m)(3) of this section. The procedures and description pertaining to the ''annual inquiry service list'' are set forth in § 351.225(n)(1)–(3).

(2) Once a circumvention inquiry request is accepted by the Secretary, a segment-specific service list will be established and the requirements of § 351.303(f) will apply. Parties other than the interested party requesting a circumvention inquiry that wish to participate in the circumvention inquiry must file an entry of appearance in accordance with § 351.103(d)(1).

(o) *Suspended investigations; suspension agreements.* The Secretary may, in accordance with section 781 of the Act, apply the procedures set forth in this section in determining whether the elements necessary for a circumvention determination under section 781 of the Act exist with respect to a suspended investigation or a suspension agreement (*see* § 351.208).

■ 7. Add § 351.227 to read as follows:

§ 351.227 Covered merchandise referrals.

(a) *Introduction.* The Trade Facilitation and Trade Enforcement Act of 2015 contains Title IV-Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title ''Enforce and Protect Act of 2015'' or ''EAPA'') (Pub. L. 114–125, sections 401, 421, 130 Stat. 122, 155, 161 (2016)). The Enforce and Protect Act of 2015 added section 517 to the Act, which established a new framework by which the Customs Service can conduct civil administrative investigations of potential duty evasion of an antidumping and/or countervailing duty order (referred to herein as an ''EAPA investigation''). Section 517(b)(4)(A)(i) of the Act provides a procedure whereby if, during the course of an EAPA investigation, the Customs Service is unable to determine whether the merchandise at issue is covered

merchandise within the meaning of section 517(a)(3) of the Act, it shall refer the matter to the Secretary to make such a determination (referred to herein as a ''covered merchandise referral''). Section 517(b)(4)(B) of the Act directs the Secretary to determine whether the merchandise is covered merchandise and promptly transmit the determination to the Customs Service. The Secretary shall consider a covered merchandise referral and issue a covered merchandise determination in accordance with the rules and procedures in this section. Unless otherwise specified, the procedures as described in subpart C of this part (§§ 351.301 through 351.308 and §§ 351.312 through 351.313) apply to this section.

(b) *Actions with respect to covered merchandise referral.* Within 15 days after receiving a covered merchandise referral from the Customs Service pursuant to section 517(b)(4)(A)(i) of the Act that the Secretary determines to be sufficient, the Secretary will take the following action.

(1) Initiate a covered merchandise inquiry (the Secretary will publish a notice of initiation in the **Federal Register**);

(2) Self-initiate a circumvention inquiry pursuant to § 351.226(b) to address the covered merchandise referral; or

(3) If the Secretary determines upon review of the covered merchandise referral that the question before the Secretary can be addressed in an ongoing segment of the proceeding, such as a scope inquiry under § 351.225 or a circumvention inquiry under § 351.226, the Secretary will publish a notice of its intent to address the covered merchandise referral in the context of such other segment in the **Federal Register**.

(c) *Time limits*—(1) *In general.* When the Secretary initiates a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary shall issue a final covered merchandise determination within 120 days from the date of publication of the notice of initiation.

(2) *Extension.* If the Secretary concludes that the inquiry is extraordinarily complicated and additional time is necessary to issue a final covered merchandise determination, then the Secretary may extend the deadline in paragraph (c)(1) by no more than 60 days.

(d) *Covered merchandise inquiry procedures.* (1) Within 20 days of the date of publication of the notice of a covered merchandise inquiry under paragraph (b)(1) of this section, interested parties are permitted one opportunity to submit comment and factual information addressing the initiation. Within 10 days of the filing of such comments, any interested party is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted by the other interested parties.

(2) Following initiation of a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary may issue questionnaires and verify submissions received, where appropriate. The Secretary may limit issuance of questionnaires to a reasonable number of respondents. Questionnaire responses are due on the date specified by the Secretary. Within 10 days after a questionnaire response has been filed with the Secretary, an interested party other than the original submitter is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within five days of the filing of such rebuttal, clarification, or correction, the original submitter is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

(3) If the Secretary issues a preliminary covered merchandise determination under paragraph (e)(1) of this section, which is not issued concurrently with a covered merchandise inquiry, the Secretary will establish a schedule for the filing of comments and rebuttal comments. Unless otherwise specified, any interested party may submit comments within 10 days after the issuance of the preliminary covered merchandise determination, and any interested party may submit rebuttal comments within five days thereafter. Unless otherwise specified, no factual information will be accepted in the comments or rebuttal comments.

(4) If the Secretary issues a preliminary covered merchandise determination concurrently with the initiation of the covered merchandise inquiry under paragraph (e)(1) of this section, paragraphs (e)(1) through (3) will not apply. In such a situation, the Secretary will establish appropriate procedures on a case-specific basis.

(5) Notwithstanding any other provision of this section, the Secretary may forego or rescind a covered merchandise inquiry, in whole or in part, under this section for the following reasons:

(i) The Customs Service withdraws its request for a covered merchandise inquiry under paragraph (b) of this section;

(ii) The Secretary issues a final determination in another segment of a proceeding that can provide the basis for the Secretary's covered merchandise determination.

(iii) Where the Secretary otherwise determines that it is not necessary to initiate or conduct a covered merchandise inquiry to address the covered merchandise referral, in which case the requirements of paragraph (e)(2) of this section will apply.

(6) The Secretary may alter any deadlines under this paragraph or establish a separate schedule for the filing of comments and/or factual information during the covered merchandise inquiry, as appropriate. Notwithstanding any other provision of this section, the Secretary may modify the deadlines of the covered merchandise inquiry to align with the deadlines of another segment of the proceeding or make no changes to its inquiry deadlines.

(e) *Covered merchandise determinations*—(1) *Preliminary determination.* The Secretary may issue a preliminary determination, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product that is the subject of the covered merchandise inquiry is covered by the scope of the order. In determining whether to issue a preliminary determination, the Secretary may consider the complexity of the issues and arguments raised in the context of the covered merchandise inquiry. The preliminary determination will be published in the **Federal Register**. The Secretary may publish notice of a preliminary determination concurrently with the notice of initiation of a covered merchandise inquiry under paragraph (b)(1) of this section.

(2) *Final determination.* The Secretary will issue a final determination as to whether the product that is the subject of the covered merchandise inquiry is covered by the scope of the order. As part of its determination, the Secretary will include an explanation of the factual and legal conclusions on which the final determination is based. The final determination will be published in the **Federal Register**. Promptly after publication, the Secretary will:

(i) Convey a copy of the final determination in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act to all parties to the proceeding (see § 351.102(b)(36)); and

(ii) Transmit a copy of the final covered merchandise determination to the Customs Service in accordance with section 517(b)(4)(B) of the Act.

(3) *Covered merchandise determinations in other segments of the proceeding.* If the Secretary addresses the covered merchandise referral in the context of another segment of the proceeding as provided for under this section, or issues a scope ruling under § 351.225 or a circumvention determination under § 351.226 that can provide the basis for the Secretary's covered merchandise determination, the Secretary will promptly transmit a copy of the final action in that segment to the Customs Service in accordance with section 517(b)(4)(B) of the Act.

(f) *Basis for covered merchandise determination.* In issuing a determination under paragraph (e)(1) or (2) of this section, the Secretary may base its determination on paragraphs (j) and (k) of § 351.225 or any provision under section 781 of the Act (paragraphs (h), (i), (j), or (k) of § 351.226).

(g)–(k) [Reserved]

(l) *Suspension of liquidation.* (1) When the Secretary publishes a notice of initiation of a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary will notify the Customs Service of the initiation and direct the Customs Service to continue the suspension of liquidation of entries of products subject to the covered merchandise inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order until appropriate liquidation instructions are issued.

(2) If the Secretary issues an affirmative preliminary determination under paragraph (e)(1) of this section that the product at issue is covered by the scope of the Order, the Secretary will direct the Customs Service as follows:

(i) To continue the suspension of liquidation of previously suspended entries of the product at issue as described under paragraph (l)(1) of this section; and

(ii) To suspend liquidation of all other unliquidated entries of the product at issue, and apply the applicable cash deposit rate under the order to those entries.

(3) If the Secretary issues an affirmative final determination under paragraph (e)(2) of this section that the product at issue is covered by the scope of the order, the Secretary will direct the Customs Service as follows:

(i) To continue the suspension of liquidation of entries suspended as directed under paragraph (l)(1) and/or (l)(2) of this section (including entries of the product at issue that are subject to suspension of liquidation as a result of another segment of a proceeding, such as an administrative review under § 351.213) and apply the applicable cash deposit rate under the order until appropriate liquidation instructions are issued pursuant to §§ 351.212 and 351.213; and

(ii) To suspend liquidation of all other unliquidated entries of the product at issue that are not otherwise subject to suspension of liquidation, and apply the applicable cash deposit rate under the order until appropriate liquidation instructions are issued pursuant to §§ 351.212 and 351.213.

(4) If the Secretary issues a negative final determination under paragraph (e)(2) of this section, and entries of the product are not otherwise subject to suspension of liquidation as a result of another segment of a proceeding, such as a circumvention inquiry under § 351.226, the Secretary will direct the Customs Service to terminate the suspension of liquidation and refund any cash deposits for such entries.

(m) *Applicability of covered merchandise determination; other segments of the proceeding; companion orders*—(1) *Applicability of covered merchandise determination.* In conducting a covered merchandise inquiry under this section, the Secretary shall consider, based on the available record evidence, whether the covered merchandise determination should be applied on a country-wide basis.

(2) *Other segments of the proceeding.* During the pendency of a covered merchandise inquiry or upon issuance of a final covered merchandise determination under paragraph (e)(2) of this section, the Secretary may take any further action, as appropriate, with respect to another segment of the proceeding. For example, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the covered merchandise inquiry for purpose of an administrative review under § 351.213.

(3) *Companion antidumping and countervailing duty orders.* If there are companion antidumping and countervailing duty orders covering the same merchandise from the same country of origin, and should the Secretary determine to initiate a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary will initiate and conduct a single inquiry with respect to the merchandise at issue only on the record of the antidumping duty proceeding. Once the Secretary issues a final covered merchandise determination on the record of the antidumping duty proceeding, the Secretary will include a copy of that determination on the record of the countervailing duty proceeding, and notify the Customs Service in accordance with paragraph (l) of this section.

(n) *Service list.* Once the Secretary initiates a covered merchandise inquiry under paragraph (b)(1) of this section, a segment-specific service list will be established and the requirements of § 351.303(f) will apply. Parties other than those relevant parties identified by the Customs Service in the covered merchandise referral that wish to participate in the covered merchandise inquiry must file an entry of appearance in accordance with § 351.103(d)(1).

(o) *Suspended investigations; suspension agreements.* The Secretary may apply the procedures set forth in this section in determining whether the elements necessary for a circumvention determination under section 781 of the Act exist with respect to a suspended investigation or a suspension agreement (*see* § 351.208).

■ 8. Add § 351.228 to read as follows:

§ 351.228 Certification by importer or other interested party.

(a) *Certification Requirements.* The Secretary may determine in the context of an antidumping or countervailing duty proceeding that an importer or other interested party shall:

(1) Maintain a certification for entries of merchandise into the customs territory of the United States; or

(2) Provide a certification by electronic means at the time of entry or entry summary; or

(3) Otherwise demonstrate compliance with a certification requirement as determined by the Secretary, in consultation with the Customs Service. Where the certification is required to be maintained by the importer or other interested party, the Secretary and/or the Customs Service may require the importer or other interested party to provide such a certification to the requesting agency upon request.

(b) *Consequences For No Provision of a Certificate; Provision of a False Certificate.* The Secretary may instruct the Customs Service to suspend liquidation of an importer's or other interested party's entries and require the importer to post a cash deposit for the antidumping duty or countervailing duty at the applicable rate if:

(1) The importer or other interested party has not provided to the Secretary or the Customs Service, as appropriate,

the certification required under paragraph (a) of this section upon request; or

(2) The importer or other interested party provided a certification in accordance with paragraph (a) of this section, but the certification contained materially false, fictitious or fraudulent statements or representations, or contained material omissions. Under either of these scenarios, the Secretary may also instruct the Customs Service to assess an antidumping duty or countervailing duty at the applicable rate at the time of liquidation or reliquidation of the entry.

■ 9. Revise paragraph (d) of § 351.305 to read as follows:

§ 351.305 Access to business proprietary information.

* * * * *

(d) *Additional filing requirements for importers.* If an applicant represents a party claiming to be an interested party by virtue of being an importer, then the applicant shall submit, along with the Form ITA–367, documentary evidence demonstrating that during the applicable period of investigation or period of review the interested party imported subject merchandise. For a scope segment of a proceeding pursuant to § 351.225 or a circumvention segment of a proceeding pursuant to § 351.226, the applicant must present documentary evidence that the interested party imported subject merchandise, or that it has taken steps towards importing the merchandise subject to the scope or circumvention inquiry. For a covered merchandise referral segment of a proceeding pursuant to § 351.227, an applicant representing an interested party that has been identified by the Customs Service as the importer in a covered merchandise referral is exempt from the requirements of providing documentary evidence to demonstrate that it is an importer for purposes of that segment of a proceeding.

■ 10. Revise paragraph (f)(2) of § 351.402 to read as follows:

§ 351.402 Calculation of export price and constructed export price; reimbursement of antidumping and countervailing duties.

* * * * *

(f) * * *

(2) *Reimbursement Certification.* (i) The importer must certify with the Customs Service prior to liquidation whether the importer has or has not been reimbursed or entered into any agreement or understanding for the payment or for the refunding to the importer by the manufacturer, producer, seller, or exporter for all or any part of the antidumping and countervailing duties, as appropriate. Such certifications should identify the commodity, the country, and the relevant entry number(s).

(ii) The reimbursement certification may be filed either electronically or in paper in accordance with the Customs Service's requirements, as applicable.

(iii) If an importer does not provide its reimbursement certification prior to liquidation, the Customs Service may accept the reimbursement certification in accordance with its protest procedures under 19 U.S.C. 1514.

(iv) Reimbursement certifications are applicable to entries for the relevant commodity that has been imported on or after the date of publication of the antidumping notice in the **Federal Register** that first suspended liquidation in that proceeding.

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Part IV

Office of Management and Budget

2 CFR Parts 25, 170, 183, et al.

Guidance for Grants and Agreements; Final Rule

OFFICE OF MANAGEMENT AND BUDGET

2 CFR Parts 25, 170, 183, and 200

Guidance for Grants and Agreements

ACTION: Final guidance.

SUMMARY: The Office of Management and Budget (OMB) is revising sections of OMB Guidance for Grants and Agreements. This revision reflects the foundational shift outlined in the President's Management Agenda (PMA) to set the stage for enhanced result-oriented accountability for grants. This guidance is reflects the Administration's focus on improved stewardship and ensuring that the American people are receiving value for funds spent on grant programs. The revisions are limited in scope to support implementation of the President's Management Agenda, Results-Oriented Accountability for Grants Cross-Agency Priority Goal (Grants CAP Goal) and other Administration priorities; implementation of statutory requirements and alignment of these sections with other authoritative source requirements; and clarifications of existing requirements in particular areas within these sections.

DATES: These revisions to the guidance are effective November 12, 2020, except for the amendments to §§ 200.216 and 200.340, which are effective on August 13, 2020.

FOR FURTHER INFORMATION CONTACT: Nicole Waldeck or Gil Tran at the OMB Office of Federal Financial Management at *GrantsTeam@omb.eop.gov* or 202–395–3993.

SUPPLEMENTARY INFORMATION:

Background and Objectives

In 2013, OMB partnered with the Council on Financial Assistance Reform (COFAR) to revise and streamline guidance to develop the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) located in title 2 of the Code of Federal Regulations (2 CFR part 200) (79 FR 78589; December 26, 2013). The intent of this effort was to simultaneously reduce administrative burden and the risk of waste, fraud, and abuse while delivering better performance on behalf of the American people. Implementation of the Uniform Guidance became effective on December 26, 2014 (79 FR 75867, December 19, 2014) and must be reviewed every five years in accordance with 2 CFR 200.109.

Based on feedback and ongoing engagement with the grants management community, the Administration established the Results-Oriented Accountability for Grants Cross Agency Priority Goal (Grants CAP Goal) in the President's Management Agenda on March 20, 2018 (available at: *https://www.performance.gov/CAP/grants/*). The Grants CAP Goal recognizes that grants managers report spending a disproportionate amount of time using antiquated processes to monitor compliance. Efficiencies could be gained from modernization and grants managers could instead shift their time to analyze data to improve results. To address this challenge, the Grants CAP Goal Executive Steering Committee (ESC), which reports to the Chief Financial Officer's Council (CFOC), has identified four strategies to work toward maximizing the value of grant funding by developing a risk-based, data-driven framework that balances compliance requirements with demonstrating successful results for the American taxpayer.

1. Strategy 1: Operationalize the Grants Management Standards
2. Strategy 2: Establish a Robust Marketplace of Modern Solutions
3. Strategy 3: Manage Risk
4. Strategy 4: Achieve Program Goals and Objectives

The revisions to 2 CFR support these four strategies. In support of Strategies 1 and 2, OMB is implementing changes throughout 2 CFR to modernize reporting by recipients of Federal grants by requiring Federal agencies to adopt standard data elements for the information recipients are required to report (available at: *https://ussm.gsa.gov/fibf/*). This adoption will enable technology solutions to better manage the data the recipients report to the Federal government. These changes also support implementation of the Grants Reporting Efficiency and Agreements Transparency Act of 2019 (GREAT Act). OMB is also implementing revisions to strengthen the governmentwide approach to performance and risk, to support efforts under Strategies 3 and 4 by encouraging agencies to measure the recipient's performance in a way that will help Federal awarding agencies and non-Federal entities to improve program goals and objectives, share lessons learned, and spread the adoption of promising performance practices.

OMB is also revising 2 CFR to implement relevant statutory requirements. These revisions include requirements from several National Defense Authorization Acts (NDAAs) and the Federal Funding Accountability and Transparency Act (FFATA), as amended by the Digital Accountability and Transparency Act (DATA Act).

Finally, OMB is implementing revisions to 2 CFR to clarify areas of misinterpretation. The revisions are intended to reduce recipient burden by improving consistent interpretation. OMB consulted and collaborated with agency representatives identified by the Grants CAP Goal ESC to support the implementation of these revisions. OMB also solicited feedback from the broader Federal financial assistance community by publishing the proposed changes to 2 CFR in the **Federal Register** for a sixty (60) day public comment period (*https://www.federalregister.gov/d/2019-28524*). OMB received 215 submissions with over 1,200 comments from the public, around 1,200 comments from Federal agencies, and around 100 comments from the Council of the Inspectors General on Integrity and Efficiency (CIGIE) Grant Reform Workgroup for a total of over 2,500 comments. OMB reconvened agency representatives to review the comments and make changes to the proposed revisions as appropriate.

In summary and as discussed further in the sections below, OMB is revising 2 CFR parts 25, 170, and 200. Additionally, OMB is adding part 183 to 2 CFR to implement Never Contract with the Enemy. The sections are revised within the following scope. Comments received that were out of scope for the revision were not accepted by OMB.

I. To support implementation of the President's Management Agenda Results-Oriented Accountability for Grants CAP Goal and other Administration priorities;

II. To meet statutory requirements and to align with other authoritative source requirements; and

III. To clarify existing requirements.

I. Support Implementation of the President's Management Agenda and Other Administration Priorities

A. Emphasizing Stewardship and Results-Oriented Accountability for Grant Program Results

The President's Management Agenda, Results-Oriented Accountability for Grants CAP goal is working toward shifting the balance between compliance and performance while reducing burden. Agencies are encouraged to promote promising performance practices that support the achievement of program goals and objectives. Many Federal agencies are working together to innovate and develop a risk-based approach that incorporates performance to achieve

results-oriented grants (where applicable). By shifting the focus to the balance between performance and compliance, agencies may have the opportunity to streamline burdensome compliance requirements for programs that demonstrate results. To support this goal, OMB is publishing revisions in multiple sections of the guidance that together emphasize the importance of focusing on performance to achieve program results throughout the Federal award lifecycle.

The provisions that were revised to improve the governmentwide approach to performance and risk emphasize stewardship and results-oriented grant making. Revisions to 2 CFR 200.102 *Exceptions* encourages Federal awarding agencies to apply a risk-based, data-driven framework to alleviate select compliance requirements for programs that demonstrate results. 2 CFR 200.202 *Program planning and design* highlights the importance of developing a strong plan and design to set the stage for demonstrating program results. 2 CFR 200.205 *Federal awarding agency review of merit proposals* strengthens the merit review process which is linked to 2 CFR 200.301 *Performance measurement* requiring Federal awarding agencies to measure recipient performance, which is derived from program planning and design (§ 200.202). Performance information focused on results must be made available to recipients in the solicitation and in the award, which is reflected in 2 CFR 200.211 *Information contained in a Federal award.* Award recipients must also be aware of termination provisions in 2 CFR 200.340 *Termination* and reinforced in 2 CFR 200.211 *Information contained in a Federal award,* which are linked to performance goals of the program (§ 200.301). Revisions to 2 CFR 200.413 *Direct costs* were also made to include evaluation costs as an example of a direct cost, which demonstrates program results.

Revisions to 2 CFR 200.202 *Program planning and design* develops a new provision. This section formalizes a requirement that are already expected of Federal awarding agencies to develop a strong program design by establishing program goals, objectives, and indicators, to the extent permitted by law, before the applications are solicited. The development of 2 CFR 200.202 emphasizes the importance of sound program design as an essential component of performance management and program administration. Ideally, program design takes place before an agency drafts related projects. This enables Federal agency leadership and employees to codify program goals, objectives, and intended results before specifying the goals and objectives of in a solicitation. A well-designed program has clear goals and objectives that facilitate the delivery of meaningful results, whether a new scientific discovery, positive impact on citizen's daily life, or improvement of the Nation's infrastructure. Well-designed programs also represent a critical component of an agency's implementation strategies and efforts that contribute to and support the longer-term outcomes of an agency's strategic plan. OMB encourages Federal awarding agencies to reference the ''Managing for Results: The Performance Management Playbook for Federal Awarding Agencies'' for promising performance practices throughout the Federal award lifecycle, including steps to develop a strong program plan and design (*www.performance.gov/CAP/grants/*).

Program design elements may include a problem or needs statement, goals and objectives; a logic model depicting the program's structure; program activities; a theory or theories of change and the evidence supporting them; performance and other indicators to measure program accomplishments and find ways to improve, set priorities, and identify targets of opportunity. In addition, it may include use or intended use of independently available sources of data, development and support of learning communities which may benefit from a shared understanding of promising practices and collaboration on common challenges and opportunities, and a system to periodically review award selection criteria.

OMB is revising to 2 CFR 200.205 *Federal awarding agency review of merit proposals,* 2 CFR 200.203 *Requirement to provide public notice of Federal financial assistance programs* and § 200.204 *Notices of funding opportunities* to strengthen merit review, public notice of Federal financial assistance programs, and the notices of funding opportunities to further the goals of results-oriented grantmaking. These changes require Federal awarding agencies to extend their merit review process to discretionary Federal awards, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications.

Additional language was included to articulate an explanation of the merit review process that Federal awarding agencies are expected to follow. Further, Federal awarding agencies are required to periodically review their Federal award merit review process. These changes support the Administration's priority to ensure a fair and transparent process for the selection of award recipients and supports efforts under the President's Management Agenda to ensure that Federal awards are designed to achieve program goals and objectives.

Changes to 2 CFR 200.206 *Federal awarding agency review of risk posed by applicants* allow Federal awarding agencies to adjust requirements when a risk-evaluation indicates that it may be merited. Changes are included in 2 CFR 200.211 *Information contained in a Federal award* and 2 CFR 200.301 *Performance measurement* further emphasize existing requirements for requiring Federal awarding agencies to provide recipients with clear performance goals, indicators, targets, and baseline data. OMB is adding language to § 200.102 *Exceptions* to emphasize that Federal awarding agencies are encouraged to request exceptions to certain provisions of 2 CFR part 200 in support of innovative program designs that apply a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance. OMB recognizes that Federal financial assistance program goals and their intended results will differ by type of Federal program. For example, criminal justice grant programs may focus on specific goals such as reducing crime, basic scientific research grant programs may focus on expanding knowledge, and infrastructure projects may fund building or infrastructure projects.

Related to the above changes that aim to strengthen program planning and Federal award terms and conditions, OMB is revising §§ 200.211 *Information contained in a Federal award* and 200.340 *Termination* to strengthen the ability of the Federal awarding agency to terminate Federal awards, to the greatest extent authorized by law, when the Federal award no longer effectuates the program goals or Federal awarding agency priorities. Federal awarding agencies must clearly and unambiguously articulate the conditions under which a Federal award may be terminated in their applicable regulations and in the terms and conditions of Federal awards. The intent of this change is to ensure that Federal awarding agencies prioritize ongoing support to Federal awards that meet program goals. For instance, following the issuance of a Federal award, if additional evidence reveals that a specific award objective is ineffective at achieving program goals, it may be in the government's interest to terminate the Federal award. Further, additional

evidence may cause the Federal awarding agency to significantly question the feasibility of the intended objective of the award, such that it may be in the interest of the government to terminate the Federal award. OMB is also eliminating the termination for cause provision because this term is not substantially different than the provision allowing Federal awarding agencies to terminate Federal awards when the recipient fails to comply with the terms and conditions.

In addition, OMB is expanding the definition of fixed amount awards in § 200.1 to allow Federal awarding agencies to apply the provision to both grant agreements and cooperative agreements.

The revisions in 2 CFR 200.301 emphasize that agencies are encouraged to measure recipient performance to improve program goals and objectives, share lessons learned, and spread the adoption of promising practices. While understanding that grant program goals and their intended results will differ by type of program, the Grants CAP Goal is working to shift the culture of Federal grant making from a heavy focus on compliance to a balanced approach that includes a focus on the degree to which grant programs achieve their goals and intended results. To provide clarity and consistency among Federal awarding agencies, a revision to include program evaluation costs as an example of a direct cost under a Federal award has been included in 2 CFR 200.413 *Direct costs.* Please refer to OMB Circular A–11 for a definition on program evaluation. Evaluation costs are allowed as a direct cost in existing guidance. This language is intended to strengthen this intent and ensure that agencies are applying this consistently.

Agencies are reminded that evaluation costs are allowable costs (either as direct or indirect), unless prohibited by statute or regulation. The work under the Grants CAP goal performance work group emphasizes evaluation as an important practice to understand the results achieved with Federal funding.

200.102 Exceptions

OMB received several comments on this section asking for clarification on the proposed revisions. Some commenters also noted that the addition of the ''or less restrictive requirements'' in 2 CFR 200.102(c) and 200.208 is confusing, redundant and not needed because Federal awarding agencies already have the discretion to impose conditions on the recipient. OMB deliberated upon these comments and ultimately agreed to replace the language ''or less restrictive requirements'' with ''adjust requirements'' within the final guidance. OMB strongly encourages Federal awarding agencies to add or remove requirements by applying a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance. One commenter felt that the inclusion of the requirement for agencies to ''apply more restrictive terms and conditions when merited as indicated by a risk evaluation'' did not warrant an exception from OMB and thus did not belong in the exceptions section. OMB concurred with the commenter and moved this language to 2 CFR 200.206 *Federal awarding agency review of risk posed by applicants.*

200.202 Program Planning and Design

Many commenters were supportive of this new section and the other revisions related to results-based grant making. Some commenters also thought the proposal could go further to better utilize federal grantees' activities to build and disseminate evidence of what works. One commenter expressed concern that revisions to the performance sections would lead to the unintended consequence of making research look like a contract agreement. OMB provided explicit language to state that performance measures for each program will be different. One commenter expressed concern that this new requirement would add burden. OMB respectfully disagrees, as this requirement is not new and does not add burden. This section reflects activities that were previously implied within 2 CFR and not explicitly included in its own section.

OMB appreciates the commenters who challenged OMB to go even further with the proposal with regards to evidence-building. OMB looks forward to furthering this discussion with stakeholder sessions in fall 2020 and will also consider these proposals in future revisions of 2 CFR. This provision is designed to operate in tandem with evidence-related statutes (*e.g.,* The Foundations for Evidence-Based Policymaking Act of 2018, which emphasizes collaboration and coordination to advance data and evidence-building functions in the Federal government) and related OMB implementation guidance (*e.g.,* OMB Memorandum M–19–23: Phase 1 implementation of the Foundations for Evidence-Based Policymaking Act of 2018. Learning Agendas, Personnel, and Planning Guidance).

200.203 Requirement To Provide Public Notice of Federal Financial Assistance Programs

There were several comments provided in response to the changes made to 2 CFR 200.203. One comment inquired as to why no similar requirements exist within the Uniform Guidance and is applicable to pass-through entities within 2 CFR 200.332. OMB notes that the Federal awarding agency does not have a direct relationship with the subaward recipient; that is the role of the pass-through entity. Mandating application of this requirement would require additional public comment as it would add burden to the process. Further, comments asked for OMB to develop guidance to help ensure that Federal awarding agencies have the appropriate controls in place with respect to their processes for making awarding decisions. OMB rejects this change for this iteration of 2 CFR as it would be a significant change that would require an opportunity for public comment based on the language and requirements imposed. Additionally, some commenters requested for language to be added regarding how often updates are expected. OMB rejects these suggestions as the language references guidance provided by General Services Administration (GSA) in consultation with OMB. That is where the requirement to update each Assistance Listing on an annual basis is specified, and it is not necessary to include this level of detail in 2 CFR 200.203.

200.204 Notice of Funding Opportunities

Commenters observed that the change in terminology from ''competitive'' to ''discretionary'' appears to broaden the requirement of these notices to not just competitive announcements, but also sole source discretionary announcements. Some commenters suggested for the language to be changed back to ''competitive'' and questioned the value of this revision. One commenter requested clarification as to whether or not this new requirement is intended to apply when the discretionary award is non-competitive. Another commenter suggested that it would be burdensome and inefficient to require agencies to have notices of funding opportunities for noncompetitive awards. OMB deliberated these comments and subsequently decided to change this language to reflect discretionary awards that are competed.

200.205 Federal Awarding Agency Review of Merit Proposals

Some of the comments received were from Federal agencies who wanted to know the purpose and the benefits behind the proposed revisions to justify the added burden. There were also concerns about the efficiency of the awarding process if these changes are made. Some commenters asked for clarity on what a systematic review meant and what would classify as ''effective.'' OMB considered all comments and made further revisions to specify that the merit review process should be periodically reviewed as a point of clarity on the process review.

OMB disagrees with the commenters that expressed these revisions will add burden. The purpose of these revisions is to add clarity to the merit review process which should already be occurring and is not a new requirement.

200.206 Federal Awarding Agency Review of Risk Posed by Applicants

As stated in the above section describing the comments received for § 200.102, one commenter felt that the inclusion of the requirement for agencies to ''apply more restrictive terms and conditions when merited as indicated by a risk evaluation'' did not warrant an exception from OMB and thus did not belong in the exceptions section. OMB concurred with the commenter, moved this language to 2 CFR 200.206 *Federal awarding agency review of risk posed by applicants,* and provided revisions to the language to read ''. . . adjust requirements when a risk-evaluation indicates that it may be merited either pre-award or post-award.'' One commenter requested pass-through entities to have access to enter information into the FAPIIS system and require a pass-through entity review as part of the risk assessment process. OMB deliberated this comment and while it is an important topic for discussion, OMB feels the scope of this revision would be too substantial for finalization without receiving additional comments from the public. Thus, OMB respectfully declines this comment. Some commenters requested for OMB to include the requirement for Federal awarding agencies to leverage commercially available data management tools. OMB declines this comment and does not specify tools required for use.

200.208 Specific Conditions

As stated above in 2 CFR 200.102, some commenters were not supportive of the requirement of the language ''or less restrictive requirements'' in 2 CFR 200.102(c) and 200.208. Some commenters described this new language as confusing, redundant and not needed because Federal awarding agencies already have the discretion to impose conditions on the recipient. One commenter applauded OMB's decision to further emphasize the flexibilities afforded to Federal awarding agencies revise or remove certain requirements based on a risk analysis. After deliberation, OMB replaced this language with ''the Federal awarding agency may adjust requirements to a class of Federal awards or non-Federal entities when approved by OMB . . . .''

200.211 Information Contained in a Federal Award

Some comments asked for clarity on the revisions that were proposed. One clarifying question was the difference between the data point for the ''Total Approved Cost Sharing or Matching, where applicable'' and ''Total Amount of the Federal Award including approved Cost Sharing or Matching.'' These are two completely separate data points which call for the approved cost sharing or matching to be identified, and then the total amount of the Federal award that is approved cost sharing or matching. OMB did not recommend that these were removed. Further, in response to various comments, the language in (a) was streamlined and users are referred to the relevant performance sections for additional information. The data points previously proposed in paragraph (b) related to performance were already captured in paragraph (a), and thus removed from (b). The proposed language for (e) was revised and moved to § 200.105(b) within the guidance. Many comments received suggested revisions that would make the language more prescriptive. Title 2 CFR was written as guidance for a large array of users. If the language is too prescriptive, it doesn't provide sufficient flexibility for use by the large array of users. Additional technical corrections were made for clarity throughout this provision. Revisions were made to § 200.211(c)(1)(iv) to clarify that if the underlying legal authority for a program changes, that may be a reason why there would be no future budget periods under an award.

200.301 Performance Measurement

Some commenters were in support of the revisions to this section. Many commenters provided suggestions for further revisions to the guidance. Several commenters provided suggestions with regards to the use of ''should'' and ''must'' throughout this section. Some commenters wanted the language to be written strongly and use the word ''must'' throughout, others preferred ''should'' and many suggested the use of these words should be consistent throughout this section. Some commenters also expressed the need for OMB to include data quality within this section. OMB concurs with the comments that consistent use of ''must'' and ''may'' should be used in this section. Some commenters also pointed out discrepancies between various performance sections and a few commenters pointed out that there are discrepancies between what is required in 2 CFR 200.211 and 200.301. In response to commenters, OMB re-wrote this section for clarity and consistency.

200.340 Termination

There were several comments received in response to the revisions proposed to this section. The comments can be group into the following discreet categories:

- Concern over arbitrary Federal award termination;
- Adding or editing language for clarity;
- Concern over how Federal awarding agencies will evaluate awards with long-term outcomes;
- Request further OMB guidance; and
- Not relevant.

The largest number of commenters expressed a concern that the proposed language will provide Federal agencies too much leverage to arbitrarily terminate awards without sufficient cause. Several commenters requested OMB reinstate the language, *for cause,* to address this issue. Some commenters requested additional clarity and examples. OMB deliberated upon these requests and decided as written agencies are not able to terminate grants arbitrarily and that it was not appropriate to include examples in 2 CFR for this section. OMB made a technical correction to provide additional clarity. Some commenters expressed concerns over how Federal awarding agencies will evaluate awards with long-term outcomes. One example from the commenter was an environmental program where the performance will require years to measure. The example from the commenter should be determined in coordination with the Federal awarding agency. OMB respectfully declines this comment. Title 2 CFR is intended to be written and used by a large array of stakeholders and thus the language is not intended to be prescriptive, as the commenter has requested. Some commenters requested further OMB guidance on this provision. OMB appreciates the request for additional

guidance and notes that guidance beyond what has been provided in the proposed rule is out of scope for this revision effort. Other comments provided were not relevant to the revisions proposed and thus OMB has rejected these comments.

200.413 Direct Costs

Most comments received for this 2 CFR 200.413 were in agreement of the revisions. The remaining comments were out of scope. Therefore, OMB did not make changes to the revised language. Some commenters requested OMB include additional examples for clarity that the activities are direct costs such as planning and program coordination, data technology, analytics, staff training, data collection, storage, communication of evaluation and analytics, and more. OMB appreciates the request to clarify additional examples as direct costs and would like to expand on this further in future revisions of 2 CFR. OMB does not think it is appropriate to include specific examples within the guidance because it could be unintentionally interpreted to be limited to only that list of items. However, as we think of ways to encourage promising performance practices, OMB would like to discuss this further during stakeholder sessions in the fall 2020.

200.328 Financial Reporting

There were some comments received in response to the revisions made to this provision. One commenter requested that the collection of information be no more frequently than semiannually to reduce burden. OMB declines this comment and notes that it was out of scope because there were no proposed changes to the frequency of financial reporting. One commenter requested that OMB add language to discourage pass-through entities from the practice of requiring more frequent and more detailed financial reporting. After discussion, OMB declines this comment as it is out of scope for this revision but will consider the comment for a future revision of 2 CFR. Several commenters sought clarification on the use of the term ''OMB-designated standards lead.'' Pursuant to the Grant Reporting Efficiency and Agreements Transparency Act of 2019 (GREAT Act), the OMB Director is required to designate a standard-setting agency (*i.e.,* the Executive department that administers the greatest number of programs under which Federal awards are issued in a calendar year). The Executive department designated by OMB as the standard-setting agency assists OMB with execution of the requirements of the GREAT Act.

In response to commenters' requests for clarity on the performance sections of the guidance, OMB moved the financial reporting requirement noted currently in 2 CFR 200.301 *Performance measurement* to 2 CFR 200.328 *Financial reporting.*

200.329 Monitoring and Reporting Program Performance

Several commenters requested clarity regarding the ''OMB-designated standards lead'' and notes that this terminology has been used throughout the guidance. As mentioned above, one commenter also suggested a technical correction to reference the Grant Reporting Efficiency and Agreements Transparency (GREAT) Act for clarity on this designation. One commenter suggested that this provision should be tied together with the closeout provision with regards to the timeframe to submission of reports. OMB concurred with this commenter and made revisions accordingly. One commenter noted concern and confusion regarding the requirement that ''costs must be charged to the approved budget period in which they were incurred.'' The commenter also suggested edits to clarify this requirement. OMB concurred with the commenter and accepted the edits for incorporation into the package.

Appendix I to Part 200—Full Text of the Notice of Funding Opportunity

A number of commenters suggested edits to this section. One commenter suggested including the term ''outcome'' to indicate the end result and also include terms for tracking and determining if that end result is being or has been achieved. OMB agreed with this commenter and made the revisions accordingly. Another commenter suggested that OMB include the requirement for Federal awarding agencies to ensure SAM registration is current before making any advanced payments and/or issuing any reimbursements. OMB disagrees with this recommendation, as this requirements is already stated in 2 CFR 25.205.

B. Expanded Use of the De Minimis Rate

The revision to 2 CFR 200.414(f) expands use of the de minimis rate of 10 percent of modified total direct costs (MTDC) to all non-Federal entities (except for those described in Appendix VII to Part 200—State and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D.1.b). Currently, the de minimis rate can only be used for non-Federal entities that have never received a negotiated indirect cost rate. The use of the de minimis rate has reduced burden for both the non-Federal entities and the Federal agencies for preparing, reviewing, and negotiating indirect cost rates. Since the publication of 2 CFR in 2013, both Federal agencies and non-Federal entities have advocated expansion of the de minimis rate for non-Federal entities that have negotiated an indirect cost rate previously, but for some circumstances, the negotiated rates have expired. The expiration may be due to breaks in Federal relationships and grant funding, or lack of resources for preparing an indirect cost proposal. This change will further reduce the administrative burden for non-Federal entities and Federal agencies and shift more resources toward accomplishing the program mission.

Another revision adds language to 2 CFR 200.414(f) to clarify that when a non-Federal entity is using the de minimis rate for its Federal grants, it is not required to provide proof of costs that are covered under that rate. The 10 percent de minimis rate was designed to reduce burden for small non-Federal entities and the requirement to document the actual indirect costs would eliminate the benefits of using the de minimis rate. Lastly, for transparency purposes, another revision adds a new paragraph (h) to § 200.414 to require that negotiated agreements for indirect cost rates are collected and displayed on a public website.

200.414 Indirect (F&A) Costs

200.414(f)

OMB received several comments that were concerned with awarding a de minimis rate that is higher than a Negotiated Indirect Cost Rate Agreement (NICRA). OMB concurs with the concerns regarding applying a higher de minimis rate in cases where a NICRA rate is lower than 10 percent. However, the regulation states in paragraph (c)(1) that Federal agencies must honor negotiated rates. Additionally, some commenters expressed concern that guidance will be misinterpreted to allow provisional rates to be considered as expired. OMB intends to include provisional rates and added clarifying language to the section in response to these comments. Further, commenters were concerned with a lack of required documentation. OMB concurs with concerns that the language implies source documents rather than the indirect cost rate agreement and altered the language accordingly. There were

several comments that suggested that the Modified Total Direct Cost (MTDC) be used as the base. However, this suggestion is out of the scope of this revision. Additionally, OMB would like to note that Federal agencies must accept the negotiated rate even if it is lower than the de minimis rate.

200.414(h)

OMB appreciated the many comments that supported the proposed requirement to post NICRAs to a public website. There were several comments that cited concerns over the sharing of proprietary information through the posting of NICRA information on a public website. To address these concerns, OMB clarified that the requirement is not for the entire rate agreement and added language to specify the exact information that is requested be provided for a non-Federal entity; the indirect negotiated rate; distribution base; and the rate type. In addition, the Indian tribes or tribal organizations, as defined in the Indian Self Determination, Education and Assistance Act, 25 U.S.C. 450b(1)) are excluded. Further, there were several comments that inquired about the applicability of this section. Lastly, there were comments that inquired about who is responsible for making sure this information is publically posted. OMB recognizes this concern and notes that the responsibility of the Federal government will be communicated appropriately.

C. Eliminate References to Non-Authoritative Guidance

To support implementation of E.O. 13892 of October 9, 2019 (Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication) and to prohibit Federal awarding agencies from including references to non-authoritative guidance in the terms and conditions of Federal awards, OMB proposed changes to § 200.105 *Effect on other issuances.* The proposed change was intended to reduce recipient burden and prevent Federal awarding agencies from imposing non-binding guidance as award requirements for recipients that has not gone through appropriate public notice and comment. The proposed revisions related to eliminating references to non-authoritative guidance were included in 2 CFR 200.211(e) *Information contained in a Federal award.* Some commenters suggested for this requirement to be moved within the guidance to 2 CFR 200.105(b) *Effect on other issuances* for clarity of the policy intent. OMB concurred with the commenter's suggestion and moved the requirement accordingly.

200.105 Effect on Other Issuances

There were several commenters in strong support of this new provision while other commenters expressed concerns regarding the implementation. One commenter mentioned that finalizing this proposal would cause significant difficulties in effective implementation and effectively overseeing programs. OMB appreciates the comments received. To address concerns, the language was re-written to better align with E.O. 13892 and provide clarity.

D. Promoting Free Speech

Several provisions within 2 CFR are revised to align with E.O. 13798 ''Promoting Free Speech and Religious Liberty'' and E.O. 13864 ''Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities.'' These sections include 2 CFR 200.300 *Statutory and national policy requirements,* 200.303 *Internal controls,* 200.339 *Remedies for noncompliance,* and 200.341 *Notification of termination requirement.* These E.O.s advise Federal awarding agencies on the requirements of religious liberty laws, including those laws that apply to grants and provide a policy for free inquiry at institutions receiving Federal grants. The revision to 2 CFR underscores the importance of compliance with the First Amendment.

200.209 Certifications and Representations, 200.300 Statutory and National Policy Requirements, 200.303 Internal Controls, 200.339 Remedies for Noncompliance, 200.341 Notification of Termination Requirement

OMB received several comments in response to this policy proposal. Some commenters supported compliance with the Constitution while other commenters questioned the need to include a reference to the Constitution. OMB appreciates all comments received and after consideration has decided to retain the proposed language within these sections. One comment suggested the removal of the word ''statutory.'' OMB concurred with this recommendation and made the change.

E. Standardization of Terminology and Implementation of Standard Data Elements

OMB is standardizing terms across 2 CFR part 200 to support efforts under the Grants CAP Goal to standardize the grants management business process and data. OMB is replacing the term ''obligation'' to either ''financial obligation'' or ''responsibility'' within the guidance as appropriate, to ensure alignment with DATA Act definitions. OMB is adding changes across the entirety of 2 CFR to ensure consistent use of terms across parts 25, 170, 183, and 200 where possible, relying on 2 CFR part 200 as the primary source. As reflected in the changes, there are instances where the terms within 2 CFR cannot be made consistent. For example, the term ''non-Federal entity'' cannot be consistently defined across 2 CFR: Parts 25 and 170 apply to Federal awards to foreign organizations, foreign public entities, and for-profit organizations, while part 200 only applies to these type of non-Federal entities when a Federal awarding agency elects for part 200 to apply. For definitions that are consistent across 2 CFR parts 25, 170, and 200, revisions have been made to parts 25 and 170 to refer definitions to part 200 as the authoritative source.

The definitions ''Catalog for Federal Domestic Assistance (CFDA) number'' and ''CFDA program title'' have been replaced with the terms ''Assistance Listings number'' and ''Assistance Listings program title'' to reflect the change in terminology.

OMB is also revising several definitions for clarity. For example, the term management decision is revised to emphasize that it is a written determination provided by a Federal awarding agency or pass-through entity.

To promote uniform application of standard data elements in future information collection requests, OMB is also revising 2 CFR 200.207 and 200.328 to reflect that information collection requests must adhere to the standards available from the OMB-designated standards lead. This change further supports OMB Memorandum M–19–16 Centralized Mission Support Capabilities for the Federal Government, which requires that future shared service solutions must adhere to the Federal Integrated Business Framework standards (available at: *https://ussm.gsa.gov/fibf/*).

Further, OMB is revising 2 CFR part 200 to replace the term ''standard form'' with ''common form.'' Some commenters submitted feedback with concerns that the change in terminology would allow agencies to create unique forms with a lack of standardization. OMB did not make any changes to the final language based on these comments. Existing forms widely adopted by Federal awarding agencies that are regularly referred to as standard forms are in fact common forms. For instance, the SF–424 series, SF–425,

and research performance progress report are all common forms/formats. OMB acknowledges that this is a significant change in how the community refers to these forms and will ensure that any future guidance on the adoption of standard data elements clarifies the use of common forms. More information regarding common forms and flexibility under the Paperwork Reduction Act is available at: *https://www.whitehouse.gov/omb/information-regulatory-affairs/federal-collection-information/*. Finally, OMB is reformatting the definitions section of 2 CFR part 200, subpart A—Acronyms and Definitions, by removing the section numbers to facilitate future additions to this section.

Subpart A—Acronyms and Definitions

New Defined Terms

Several commenters sought to clarify existing parts within 2 CFR and grant processes and procedures through the addition of several defined terms under 200.1 *Definitions.* Examples of recommended terms to include were formula grant, program beneficiary/recipient, procurement, administrative costs, for-profit organization, conflict of interest, covered technology, architectural/engineering professional services, Federally-owned property, and demonstration.

In certain cases OMB agrees that additional terms may provide greater clarification to the regulation and the management of Federal financial assistance. OMB may consider the recommended definitions for the suggested terms in future updates to 2 CFR. In other cases, the terms are either not used in 2 CFR or are only applicable to a small number of Federal awarding agencies. OMB declined these recommendation either due to scope, or because they do not align with the intent of this regulation.

Inserting Programmatic Instruction in Definitions

Several commenters recommended inserting programmatic instruction for specific terms, which would provide more guidance for Federal agencies, non-Federal entities, auditors, or others.

OMB considered these comments, but determined that it was inappropriate to include programmatic guidance in the definition of terms for the regulation. The purpose of 2 CFR 200.1 *Definitions* is to provide meaning for specified terms within the regulation; guidance and instruction is more appropriate other parts of 2 CFR.

Modification to Existing Definitions

Several commenters sought to clarify existing definitions by providing technical corrections or clarification statements.

In several cases, OMB agrees that technical corrections are necessary. The updates to these definitions are minor and did not affect the intent of the term. In other cases, the recommendations were either too substantive or did not align with the intent of this update to the regulation. OMB may consider these recommendations in future updates to 2 CFR.

Formatting

Several commenters disagreed with the removal of the numbering of the definitions. The commenters were concerned about the overall changes to the numbering of 2 CFR part 200, which would add burden to updating the non-Federal entities' policies and procedures.

OMB appreciates these concerns, but does not believe that the removal of the definition numbering will generate any significant additional burden on non-Federal entities, because these groups already should regularly review and update their policies and procedures to ensure compliance with Federal, state, and local laws and regulations. This revision is expected to limit future burden for non-Federal entities in the event of new terms are added to this section of part 200, which would change the section's numeration.

Subpart A—Specific Definitions

Compliance Supplement

A number of commenters recommended clarifying the definition of compliance supplement and offered revised wording for the definition. OMB concurred and adapted the definition in consultation with members of the interagency working group. One commenter recommended revising the definition to frame the compliance supplement as the sole source of information for auditors. OMB did not include this recommendation because the compliance supplement is one of the authoritative sources that auditors can use when auditing Federal programs. Other sources include Federal awarding agency and program specific documents.

Contract

One commenter noted that the definition of contract was confusing, while another recommended cross-referencing the Subrecipient and Contractor Determinations subsection (§ 200.331). OMB agreed with this assessment and updated the definition to make it easier to read, understand, and use. Another commenter recommended the addition of mutual aid or intergovernmental agreements to the definition of contract. This change was not considered because it would substantively alter the definition without providing the public the opportunity to comment on the revision.

Cooperative Agreement, Grant Agreement

One commenter recommended specifically explaining ''transfer anything of value'' in the definitions of cooperative agreement and grant agreement. OMB opted to keep the existing language because both definitions cite 31 U.S.C. 6101(3), which provides the scope of the ''transfer of anything of value.'' A commenter recommended further describing substantial involvement in the definition of cooperative agreement. This change was not considered because the Federal awarding agency and the recipient are given the discretion to negotiate this relationship. Another commenter stated that there was a conflict §§ 25.306 and 200.1 associated with the transfer of land or property. OMB disagrees as the two definitions align and are also in alignment with the associated legislation. Through the review of the definitions of cooperative agreement and grant agreement, OMB and members of the working group clarified that the relationship was between the Federal awarding agency and a recipient or a pass-through entity and a subrecipient.

Discretionary, Non-Discretionary Award

Technical edits were made to the definitions of discretionary award and non-discretionary award to provide clarity to the intended definitions.

Federal Interest

Two commenters recommended correcting the formula for determining *Federal interest,* noting that reliance on the Federal share of the total project costs does not appropriately account for the Federal interest in real property, equipment, or supplies. OMB agreed with this recommendation and amended the definition to appropriately rely on the percentage of Federal participation in the total cost of the real property, equipment, or supplies as part of the formula.

Recipient

One commenter recommended amending recipient be inclusive of entities that are not necessarily non-Federal entities such as for-profit and

foreign entities as well as Federal agencies. OMB agreed with this assessment and updated the definition appropriately.

Subsidiary

One commenter recommended replacing non-Federal entity with entity, while another recommended adding ''or controlled'' after owned to be more inclusive of a diversity of organizations that may have subsidiaries. Several other commenters were confused by the reference to the FAR or found it to be redundant, recommending that it be removed from the definition. OMB agreed with these recommended changes to the definition and incorporated them, as appropriate.

Period of Performance, Budget Period, and Renewal

OMB also revised the proposed definitions of period of performance, budget period, and renewal in 2 CFR part 200, as there were a significant number of comments from varying stakeholders indicating that the proposed revised definitions of period of performance, budget period, and renewal created more confusion than clarity. In response, the final rule revises the definitions for these terms to clarify how period of performance, budget period, and renewal operationally relate. Additionally, the final rule revises 2 CFR 200.309 to better describe how the period of performance is modified if there is an extension or termination of a current award. Some commenters expressed concern about the removal of pass-through entities' authority to allow pre-award costs to subrecipients. It was not OMB's intention to remove the pass-through entities' authority to allow pre-award costs to subrecipients. OMB recognizes these concerns and added language to 2 CFR 200.458 for clarification in response to commenters. Further, there were many comments that expressed concern about removing 2 CFR 200.309 from the guidance due to burden with other entities that reference 2 CFR within their own rules and regulations. Including 2 CFR 200.309 in the final publication will eliminate that concern from commenters.

The definition of period of performance and renewal was revised to help clarify that the term period of performance reflects the total estimated time interval between the start of an initial Federal award and the planned end date, and that the period of performance may include one or more budget periods, but the identification of the period of performance does not commit funding beyond the currently approved budget period. The definition of budget period was edited to clarify that recipients are authorized to expend the current funds awarded, including any funds carried forward or other revisions pursuant to 2 CFR 200.308. Further, recipients may only incur costs during the first year budget period until subsequent budget periods are funded based on the availability of appropriations, satisfactory performance, and compliance with the terms and conditions of the award. The definition of renewal was edited to help clarify that a renewal award begins a distinct period of performance that starts contiguous with, or closely following, the end of the expiring award. This change also ensures consistent use of the term for purposes of transparency reporting as required by FFATA.

200.403 Factors Affecting Allowability of Costs

To maintain consistency within the guidance regarding the definition of *Budget Period,* 2 CFR 200.403(h) has been added to clarify that costs must be incurred during the approved budget period and the Federal awarding agency may waive prior written approval to carry forward unobligated balances to subsequent budget periods.

Improper Payment, Questioned Costs

Based on some confusion expressed in comments, the definition of improper payment was revised to accurately reflect how questioned costs, including costs questioned costs identified in audits, are not improper payments until reviewed and confirmed as such.

Internal Controls

Based on some confusion expressed in comments, minor modifications to the definition of internal controls were made to provide greater clarity on the internal controls requirements for non-Federal entities and Federal agencies.

Oversight Agency for Audit

Several commenters expressed confusion with the revision to this definition. Some commenters provided suggested edits for clarity. After deliberation and in response to the commenters, OMB made further edits to this definition for clarity.

Simplified Acquisition Threshold, Micro-Purchase

Multiple commenters were confused by the second paragraph proposed to be added to the definition for *simplified acquisition threshold.* Revisions were made to this paragraph to alleviate confusion and accurately reflect how the simplified acquisition may be determined. Minor technical edits were made to the definition for *micro-purchase,* based on comments, to clarify that the cognizant agency for indirect costs may approve a higher micro-purchase threshold if requested by the non-Federal entity.

F. Support for Domestic Preferences for Procurement

As expressed in Executive Order (E.O) 13788 of April 18, 2017 (Buy American and Hire American) and E.O. 13858 of January 21, 2019 (Executive Order on Strengthening Buy-American Preferences for Infrastructure Projects), it is the policy of this Administration to maximize, consistent with law, the use of goods, products, and materials produced in the United States, in Federal procurements and through the terms and conditions of Federal financial assistance awards. In support of this policy, OMB is adding a new section 2 CFR 200.322 *Domestic preferences for procurement,* encouraging Federal award recipients, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States when procuring goods and services under Federal awards. This Part will apply to procurements under a grant or cooperative agreement.

200.322 Domestic Preferences for Procurement

OMB appreciates the many comments were very supportive of this section. Several comments suggested including language in Appendix II because the proposed new 2 CFR 200.322 includes the requirement that such term be flowed down to all contracts and purchase orders. OMB accepts this change and has made the appropriate edits to the final language. Several comments asked for clarification regarding how preference is given. OMB rejects this change as the language gives Federal awarding agencies the flexibility to adjust their guidance accordingly. Further, another comment suggested to exempt purchases below the micro-purchase threshold from requirements in this section to reduce the burden on non-Federal entities. OMB rejects this suggestion as OMB does not agree with the assessment that an additional burden is being placed. The language did not set a dollar threshold and instead states that domestic preference should be used as appropriate and to ''to the maximum extent practicable.'' One commenter suggested a reference to this section should also be included in *Appendix II to Part 200—Contract Provisions for Non-Federal Entity*

Contracts Under Federal Awards. OMB concurred with this commenter and made the revision accordingly.

G. Changes to the Procurement Standards to Better Target Areas of Greater Risk and Conform to Statutory Requirements

To better target 2 CFR requirements on areas of greater risk consistent with the intent of the Grants CAP Goal, and to align with legislation related to procurement standards, OMB is revising the guidance to increase the micro-purchase threshold from $3,500 to $10,000, raising the simplified acquisition threshold from $100,000 to $250,000, and allowing non-Federal entities to request a micro-purchase threshold higher than $10,000 based on certain conditions. The NDAA 2017 increased the micro-purchase threshold from $3,500 to $10,000 for institutions of higher education, or related or affiliated nonprofit entities, nonprofit research organizations or independent research institutes (41 U.S.C. 1908).

The NDAA 2017 also established an interim uniform process by which these recipients can request, and Federal awarding agencies can approve requests to apply, a higher micro-purchase threshold. Specifically, the NDAA 2017 allowed a threshold above $10,000, if approved by the head of the relevant executive agency and consistent with clean audit findings under chapter 75 of title 31, internal institutional risk assessment, or State law. The NDAA for FY 2018 (NDAA 2018) increased the micro-purchase threshold to $10,000 for all recipients and also increased the simplified acquisition threshold from $100,000 to $250,000 for all recipients. The revisions to § 200.320 outline a permanent process by which non-Federal entities may establish a micro-purchase level above the $10,000 threshold.

A proposal to increase the micro-purchase and simplified acquisition thresholds in the Federal Acquisition Regulation (FAR) was published in the **Federal Register** on October 2, 2019 (84 FR 52420), FAR Case 2018–004. The FAR Rules at 48 CFR part 2, subpart 2.1, were finalized on July 2, 2020 (85 FR 40060, 85 FR 40064) with the effective date of August 31, 2020. In addition, the American Innovation and Competitiveness Act of 2017 (AICA), section 207(b) required that 2 CFR part 200 be revised to conform to the requirements concerning the micro-purchase threshold.

In response to these statutory changes, OMB issued OMB Memorandum M–18–18, Implementing Statutory Changes to the Micro-Purchase and the Simplified Acquisition Thresholds for Financial Assistance (June 20, 2018) which is now incorporated in 200.320. With the final procurement guidance now implemented, OMB Memorandum M–18–18 is rescinded.

200.320 Methods of Procurement To Be Followed

There were nearly 100 comments received relating to this section. Many expressed confusion with the proposed revisions and provided recommendations for clarity. In response, the section was rewritten to incorporate many of the suggestions from commenters.

The following revisions were made to 2 CFR 200.320:

- The procurement types were grouped into three categories: (1) Informal (micro-purchase, small purchase); (2) formal (sealed bids, proposals) and (3) Non-Competitive (sole source)
- The micro-purchase threshold was raised from $3,500 to $10,000
- All non-Federal entities are now authorized to request a micro-purchase threshold higher than $10,000 based on certain conditions that include a requirement to maintain records for threshold up to $50,000 and a formal approval process by the Federal government for threshold above $50,000; and
- The simplified acquisition threshold was raised from $150,000 to $250,000

200.321 Contracting With Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

Several comments were made regarding this section that were out of scope for the current set of revisions. As such, no changes to the proposed language will be made at this time.

200.317 Procurements by States

One commenter suggested that 2 CFR 200.317 should reference the procurement requirements in 2 CFR 200.322 Domestic preference for procurements, as it is applicable to all non-Federal entities. OMB concurred with the commenter and made revisions accordingly.

200.318 General Procurement Standards

One commenter expressed strong support for the revisions proposed for this provision. Most commenters provided suggested edits for clarity. One commenter provided suggested edits to clarify that the ''. . . non-Federal entity must use its own documented procurement procedures which must conform to applicable State, local, and tribal laws and regulations; and Federal law. In addition, procurements for goods and services that are directly charged to a Federal award must conform to the standards identified in this part.'' OMB agreed with this clarifying revision and incorporated it within 2 CFR 200.318.

200.319 Competition

One commenter expressed support for the revisions to 2 CFR 200.319. Other commenters provided suggested edits for clarity. One commenter asked for clarity of the meaning ''section'' and expressed the entire subpart D should be referenced. OMB declines this comment and notes that the term ''section'' should not be interpreted to mean the entire subpart D and the proposed revisions to 2 CFR 200.319 only adds a new reference to 2 CFR 200.320. This new language in no way infers that the other procurement provisions do not apply. One commenter expressed that it is unclear what ''required'' under an award means. OMB notes that this language is used throughout the document as no such change was made.

H. Emphasis on Machine-Readable Information Format

OMB aims to clarify the methods for collection, transmission, and storage of data in 2 CFR 200.336 to further explain and promote the collection of data in machine-readable formats. A machine-readable format is a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost (44 U.S.C. 3502(18)). The clarification reinforces the machine-readable requirements in *the Foundations of Evidence-Based Policymaking Act of 2018* (Pub. L. 115–435) and accompanying OMB guidance. This requirement also reflects the need to continually evaluate which formats (and structures) maximize accessibility and usability for all stakeholders. Machine-readable formats will also help support the Leveraging Data as a Strategic Asset Cross-Agency Priority Goal (CAP Goal #2) and efforts under the Grants CAP Goal to Build Shared IT Infrastructure.

200.336 Methods for Collection, Transmission, and Storage of Information

OMB received some comments on 2 CFR 200.336 requesting the inclusion of PDFs in the language. OMB declined this suggestion since prescribing a specific format in official guidance was deemed inappropriate.

I. Changes to Closeout Provisions To Reduce Recipient Burden and Support GONE Act Implementation

Based on lessons learned from the implementation of 2 CFR part 200 and the Grants Oversight and New Efficiency Act (GONE Act), OMB is revising 2 CFR 200.344 *Closeout* to support timely closeout of awards, improve the accuracy of final closeout reporting, and reduce recipient burden.

The final language will increase the number of days for recipients to submit closeout reports and liquidate all financial obligations from 90 days to 120 days. This change takes into consideration the challenges faced by pass-through entities with respect to awards that contain a large number of subawards. These recipients must reconcile subawards and submit final reports to Federal awarding agencies within the same 90 day period. Recognizing the need for pass-through entities to receive timely reports from subrecipients to report back to Federal awarding agencies, OMB will continue to require subrecipients to submit their reports to the pass-through entity within 90 days. The intent of this change is to support financial reconciliation, help ease the burden associated with submitting reports for closeout, and promote improved accuracy. However, OMB recognizes that providing additional time may increase the likelihood that non-Federal entities will not submit their final closeout reports. To mitigate this risk, OMB is requiring Federal awarding agencies to report when a non-Federal entity does not submit final closeout reports as a failure to comply with the terms and conditions of the award to the OMB-designated integrity and performance system. Finally, OMB is publishing the requirement of Federal awarding agencies to make every effort to close out Federal awards within one year after the end of the period of performance unless otherwise directed by authorizing statute. The language is intended to promote timely closeout of awards, assist with reconciling closeout activities, and hold recipients accountable for submitting required closeout reports.

200.344 Closeout

Many of the comments in response to revisions to 2 CFR 200.344 were in support of the proposed revisions. The two sections listed below received the highest volume of comments.

200.344(a)

OMB is appreciative of the many commenters who supported the proposed extension of deadlines for the submission of reports. Due to the significant amount of support for the changes, OMB is keeping the language published in the proposed version. OMB also received comments to permit pass-through entities to establish earlier dates, in accordance with existing practice. OMB accepts this recommendation. OMB also received comments relating to final indirect cost rates after the end of the period of performance. OMB rejects these suggestions, as a revised final Federal financial report can be submitted after closeout. Therefore, lengthening the deadline would not have an impact. OMB is making several small changes based on received comments, such as changing ''non-Federal entity'' to ''recipient'' and adding ''or an earlier date as agreed upon by the pass-through entity and subrecipient.''

200.344(i)

OMB received several comments that recommended making the Federal Awardee Performance and Integrity Information System (FAPIIS) entries optional. The intent of the added regulation was to hold recipients accountable and share performance across Federal agencies, which promotes results-oriented grantmaking. Therefore, OMB is finalizing the language that makes entry into FAPIIS mandatory. Further, it should be noted that entry into FAPIIS does not constitute a termination, which OMB has clarified in the final language.

200.345 Post-Closeout Adjustments and Continuing Responsibilities

Some commenters expressed concerns that the language proposed for this provision was too open-ended and the period could extend beyond record retention. OMB concurred with the commenters and made revisions to address these concerns.

J. Changes to Performing the Governmentwide Audit Quality Project

Revisions to 2 CFR 200.513 include a change in the date for the requirement for a governmentwide audit data quality project that must be performed once every 6 years beginning with audits submitted in 2018. This date has been changed to 2021, given the significant changes to the 2019 Compliance Supplement in support of the Grants CAP Goal.

200.513 Responsibilities

Comments in response to the change regarding the assignment of the cognizant agency for audit responsibilities based on the direct funding and total funding were positive and thus OMB did not make changes to the language for the final publication. We clarified that the determination for funding is based the federal award expenditures as reported in the recipient's Schedule of expenditures of Federal Awards (see § 200.510(b)). Commenters in response on the governmentwide project to determine the quality of single audits suggested a delay on such project by a few years due the changes in the 2019 Compliance Supplement regarding the maximum of review for compliance areas. Commenters also suggested the use of current and on-going quality review performed by agencies on single audits to substitute or complement the governmentwide project. We agreed on the suggested timing of the project and have removed the specific date listed in the proposal. OMB will work with the agencies and the single audit stakeholders to determine a future date for the project that is more optimal. OMB added language to address that current quality control review work performed by the agencies can be leveraged for the governmentwide project.

II. Meeting Statutory Requirements and Aligning 2 CFR With Other Authoritative Source Requirements

A. Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment

OMB revised 2 CFR to align with section 889 of the NDAA for FY 2019 (NDAA 2019). The NDAA 2019 prohibits the head of an executive agency from obligating or expending loan or grant funds to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain the equipment, services, or systems prohibited systems as identified in NDAA 2019. To implement this requirement, OMB is adding a new section, 2 CFR 200.216 *Prohibition on certain telecommunication and video surveillance services or equipment,* which prohibit Federal award recipients from using government funds to enter into contracts (or extend or renew contracts) with entities that use covered telecommunications equipment or services. This prohibition applies even if the contract is not intended to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services. As described in section 889 of the NDAA 2019, covered telecommunications equipment or services includes:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

200.216 Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment

Commenters expressed widespread concerns on the impact and implementation of the statutory requirement. OMB sought to address commenter concerns by re-writing this section to align closely with the law, add a new definition for telecommunications and video surveillance costs, and add a new section 2 CFR 200.471. The final language provides guidance describing the meaning of covered telecommunications as explained in the statute. The language also aligns with the requirements in the statute affecting the financial assistance community to include the prohibition of non-Federal entities from obligating or expending loan or grant funds to (1) procure or obtain, (2) extend or renew a contract to procure or obtain, or (3) enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as part of any system.

Federal awarding agencies are also required by the law to work with OMB to prioritize available funding and technical support to assist affected businesses, institutions and organizations. In addition, the funds must be prioritized as reasonably necessary for affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained. Further, OMB added a new 2 CFR 200.471 *Telecommunication and video surveillance costs* to provide clarity that the telecommunications and video surveillance costs associated with 2 CFR 200.216 are unallowable. A new definition for *telecommunication and video surveillance costs,* which is described in 2 CFR 200.471, has also been added to 2 CFR for clarity.

B. Never Contract With the Enemy

To meet statutory requirements, OMB is adding part 183 to 2 CFR to implement Never Contract with the Enemy, consistent with the fact that the law applies to only a small number of grants and cooperative agreements. Never Contract with the Enemy applies only to grants and cooperative agreements that exceed $50,000, are performed outside the United States, including U.S. territories, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

To implement Never Contract with the Enemy and to reflect current practice, OMB requires Federal awarding agencies to utilize the System for Award Management (SAM) Exclusions and the FAPIIS to ensure compliance before awarding a grant or cooperative agreement. Federal awarding agencies are prohibited from making awards to persons or entities listed in SAM Exclusions (NDAA 2017) pursuant to Never Contract with the Enemy and are required to list in FAPIIS any grant or cooperative agreement terminated due to Never Contract with the Enemy as a Termination for Material Failure to Comply. The revisions also require agencies to insert terms and conditions in grants and cooperative agreements regarding non-Federal entities' responsibilities to ensure no Federal award funds are provided directly or indirectly to the enemy, to terminate subawards in violation of Never Contract with the Enemy, and to allow the Federal Government access to records to ensure that no Federal award funds are provided to the enemy.

The law allows Federal awarding agencies to terminate, in whole or in part any grant, cooperative agreement, or contract that provides funds to the enemy, as defined in the NDAA for FY 2015 (NDAA 2015). This statute applies to procurement as well as to grants and cooperative agreements. OMB coordinated with the procurement community as appropriate before issuing this final guidance, including the roles and responsibilities of the covered combatant command and Federal awarding agencies.

Part 183 Never Contract With the Enemy

Many of the comments focused on aligning the regulation with the authorizing legislation and streamlining and using consistent terms in the regulatory language. OMB concurred with these comments and made the necessary changes to the language. OMB also agreed with several comments suggested the use of ''recipient'' rather than ''non-Federal entity.'' In addition, OMB revised part 183 to include a reference to void covered grants or cooperative agreements, and updated specific parts of the legislative authority that were set to expire by aligning with recently passed legislation for the extension of dates.

A couple commenters noted the potential burden associated with checking *SAM.gov* on a monthly basis. OMB concurred with these comments and revised the language accordingly.

C. Requirement for the FAPIIS To Include Information on a Non-Federal Entity's Parent, Subsidiary, or Successor Entities

To meet statutory requirements, OMB revised 2 CFR parts 25 and 200 to implement Sec. 852 of the NDAA for FY 2013 (NDAA 2013), which requires that the FAPIIS include information on a non-Federal entity's parent, subsidiary, or successor entities. OMB requires financial assistance applicants to provide information in SAM on their immediate owner and highest-level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract, grant, or cooperative agreement within the last three years. In addition, OMB requires that prior to making a grant or cooperative agreement, agencies must consider all of the information in FAPIIS with regard to an applicant's immediate owner or highest-level owner and predecessor, or subsidiary, if applicable. These revisions are consistent with the Federal Acquisition Regulation (FAR) final rule regarding this law published at 81 FR 11988 on March 7, 2016.

Part 25 Universal Identifier and System for Award Management

OMB received a significant number of comments concerning subrecipient requirements and registration with the

SAM database. These commenters expressed concern with requiring subrecipients to fully register with the SAM database. The commenters thought this requirement would be overly burdensome and was unnecessary.

It was not OMB's intention to require subrecipients to fully register with the SAM database. To address this concern, OMB added a new ''Subpart C-Recipient requirements of subrecipients'' and a note to the terms in appendix A to clearly state that subrecipients do not need to fully register with the SAM database.

Further, several commenters thought the addition of the requirement for subrecipients to register with the SAM database, Federal agencies applying for or receiving Federal awards register in the SAM database made sections of part 25 confusing. The commenters thought that using the term ''Federal agency'' could be misunderstood. Some commenters thought this was particularly true with regard to section 100.

OMB agreed that the addition of the term ''Federal agency'' in part 25 made the requirements in part 25 less clear. OMB and the interagency work group also thought that there was a need for additional clarity on who the requirements actually apply to and in what situation. As a result, OMB added definitions for ''applicant'' and ''recipient'' in part 25 and removed ''non-Federal entity'' and ''Federal agency'' where appropriate throughout part 25.

25.200 Requirements for Notice of Funding Opportunities, Regulations, and Application Instructions

Several commenters stated that their organizations do not have a higher level owner or subsidiaries and they may not have predecessors. OMB recognizes that not all entities will have the same organizational structure. The purpose of providing this information is for greater transparency in the awarding of Federal financial assistance. The regulatory language requires that applicants and recipients must provide the information ''if applicable.'' If the requested information is not applicable, an applicant or recipient would not be required to report it.

D. Increase Transparency Through FFATA, as Amended by the DATA Act

OMB made several revisions to increase transparency regarding Federal spending as required by FFATA, as amended by the DATA Act, which mandates Federal agencies to report Federal appropriations received or expended by Federal agencies and non-Federal entities. OMB has revised the reporting thresholds to further align financial assistance requirements with those of the Federal acquisition community.

To increase transparency, OMB extended the applicability of Federal financial assistance in 2 CFR part 25 and 2 CFR part 170 beyond grants and cooperative agreements so that it includes other types of financial assistance that Federal agencies receive or administer such as loans, insurance, contributions, and direct appropriations.

OMB also made changes throughout 2 CFR to make it clear that Federal agencies may receive Federal financial assistance awards. This will increase transparency for Federal awards received by Federal agencies.

To further align implementation of FFATA, as amended by DATA Act, between the Federal financial assistance and acquisition communities, OMB revises the Federal awarding agency and pass-through entity reporting thresholds. For Federal awarding agencies, OMB revises 2 CFR part 170 to require agencies to report Federal awards that equal or exceed the micro-purchase threshold as set by the FAR at 48 CFR part 2, subpart 2.1. Consistent with the FAR threshold for subcontract reporting, OMB will raise the reporting threshold for subawards that equal or exceed $30,000.

OMB proposed to revise 2 CFR part 25 to allow agencies the flexibility to exempt a foreign entity applying for or receiving an award for a project or program performed outside the United States valued at less than $100,000. Currently, Federal awarding agencies have the flexibility to exempt this requirement for awards valued at less than $25,000. The exemption applies to cases where the Federal agency has conducted a risk-based analysis and deems it impractical for the entity to comply with the requirements(s). OMB proposed to make this revision after receiving feedback from the international community that requiring certain foreign entities to register in SAM introduces substantial burden with no significant value for the Federal awarding agency. Federal awarding agencies will continue to remain responsible for reporting these awards for transparency purposes.

Finally, OMB will require Federal awarding agencies to associate Federal Assistance Listings with the authorizing statute to make listings more consistent. This supports implementation of the DATA Act which requires agencies to report award level Federal Assistance Listings information for display on *www.usaspending.gov.*

Part 25 Universal Identifier and System for Award Management

Some commenters expressed concern regarding the proposal to expand SAM registration requirements to all type of Federal financial assistance as required by FFATA. Specifically, commenters requested clarity on who is considered the applicant or recipient in cases when the intended recipient does not have a direct relationship with the Federal awarding agency. For instance, for certain loan and loan guarantee programs, a third-party administers the program on behalf of the Federal awarding agency. One organization specifically expressed concern that these third-party administers may not participate in loan guarantee programs, if they are required to register in SAM. OMB disagrees that it is overly burdensome for third-party administrators to register in SAM, however, OMB agreed that it would be inappropriate to have the intended recipient who does not have a direct relationship with the Federal awarding agency to register in these instances. In response to these comments, OMB revised the definitions of applicant and recipient to clarify that SAM registration requirements apply to those entities that receive Federal awards directly from a Federal awarding agency and that applicants and recipients also include those entities that administer Federal awards on behalf of Federal awarding agencies.

25.110 Exceptions to This Part

Some commenters supported raising the threshold for foreign organizations or foreign public entities to $100,000 in 2 CFR 25.110. Other commenters expressed concerns that a thorough pre-award Federal review would not be conducted for foreign entity recipients under this higher threshold and it would be a disservice to the American taxpayer to raise the threshold. OMB also received comments that requiring Federal awarding agencies to only grant exemptions to foreign organizations or foreign public entities on a case-by-case basis to be overly burdensome.

OMB does not think that requiring Federal awarding agencies to determine whether to grant exemptions to foreign organizations or foreign public entities on a case-by-case basis is overly burdensome. Considering the comments received, OMB decided to retain the current threshold of $25,000.

Based on feedback provided by agencies and in light of the COVID–19 emergency and past emergency

situations where this requirement has been waived, OMB added an exception in § 25.110 allowing agencies to waive the requirement to register in SAM when there are exigent circumstances that would prevent an applicant from registering prior to the submission of an application. Federal awarding agencies are responsible for the determination on whether there are exigent circumstances that prevent an applicant from registering in SAM and are no longer required to request a waiver from OMB in these instances.

Part 170 Reporting Subaward and Executive Compensation Information

170 Definitions

Several commenters mentioned the difference between the term non-Federal entity in part 170 and part 200 and requested that part 170 reference part 200 for this definition. Related comments also were provided to the definitions of foreign organizations and foreign public entity. The definition of non-Federal entity in part 170 intentionally includes foreign organizations, foreign public entities, and for-profit organizations, which is not included in the definition of non-Federal entity in part 200. Part 200 only applies to these organization types when a Federal awarding agency chooses to apply the requirements in their adoption of part 200. Part 170 applies to foreign and for-profit organizations because of the Federal Funding Accountability and Transparency Act (Pub. L. 109–282, hereafter cited as ''Transparency Act'') requirements. Thus, the definition for non-Federal entity in part 200 and part 170 will remain different.

170.110 Types of Entities to Which This Part Applies

Several commenters requested clarification on the language surrounding ''non-Federal'' and ''Federal agencies.'' OMB concurred with these comments and made the corresponding changes to ensure clarity. Further, OMB also agreed with comments that suggested clarification to § 170.110(b) in relation to Title IV funds and made the subsequent edits in the final language.

170.115 Deviations

OMB concurred with comments asking to define ''deviation'' to differentiate between exceptions by removing ''deviation'' and adding paragraph (c) to ''Types of Exemptions.''

170.200 Federal Awarding Agency Reporting

OMB received several comments suggesting that a reference to the definition for micro-purchase in § 200.1 be added to the end of the section. OMB concurred and made this change in the final language. Further, OMB received comments relating to the grammatical structuring of this section. After further review, OMB retained the existing language.

170.210 Requirements for Notices of Funding Opportunities, Regulations, and Application Instructions

OMB concurred with a comment that suggested including the information on the requirements for Notice of Funding Opportunity found in 2 CFR 200.204 and appendix I to part 200. OMB made the suggested changes to appendix I to include these references. Further, comments inquired if OMB has considered collecting the assurance from applicants when they register and renew in *beta.SAM.gov.* OMB would like to note that this is already part of the requirements for award terms and conditions, and the needed assurance should go into the Compliance Supplement for auditors to check that the assurance is received from the recipient. Therefore, no changes related to obtaining assurances were made to the language in this section.

170.220 Award Term

Several commenters referenced the thresholds discussed in part 25. OMB would like to point out that the thresholds in part 25 are unrelated to the threshold in § 170.220. Additionally, several comments suggested changes that were outside of the scope of this revision. OMB concurred with a suggestion to remove a reference to the Recovery Act in appendix A. Further, a comment suggested the deletion of the insertion of ''and Federal agency'' in paragraph (a) of this section. OMB notes that some agencies can make awards to other agencies, dependent on the authority. Therefore, it is necessary to keep the language that was used in the proposed version. One commenter noted that raising the subaward reporting threshold from $25,000 to $30,000 is unlikely to result in greater efficiencies or ease administrative requirements and recommended for the threshold to be increased to at least $75,000 or $100,000. OMB disagrees with this commenter's recommendation, as the purpose of this change was to further align implementation of FFATA, as amended by DATA Act, between the Federal financial assistance and acquisition communities.

170.305 Federal Award

Commenters had questions relating to how this definition differs from part 200. OMB would like to note that the definition differs because this section is discussing Federal awards in the context of ''direct'' federal awards. Federal award in part 200 includes is more expansive to include caveats depending on which section it is applied to, so the definition cannot be the same. As such, the proposed language remains.

170.315 Executive

One comment suggested clarifying this definition as many recipients of Federal awards are state and local governments with elected officials. OMB rejected this change as this is already covered within the ''Exceptions'' to this section. Further, one comment requested that this definition be included in part 200. OMB aims to eliminate duplicative definitions and thus respectfully declines this comment to also include the definition in part 200.

170.320 Federal Financial Assistance Subject to the Transparency Act

A commenter noted that the term Federal financial assistance subject to the Transparency Act is not defined in part 200. OMB concurred with this comment and made edits to the definition in § 170.320 to clarify that the term includes Federal financial assistance as defined in part 200, with some limited exceptions.

170.325 Subaward

Commenters recommended deleting the definition for ''Subaward'' and including a reference to the definition used in part 200 to reduce duplication. OMB concurred with this recommendation and made the subsequent change.

E. Aligning 2 CFR With Authoritative Sources

OMB revises 2 CFR 200.431 to allow states to conform with Generally Accepted Accounting Principles (GAAP), specifically Governmental Accounting Standards Board (GASB) Statement 68, and to continue to claim pension costs that are both actual and funded. OMB has made this revision because GASB issued Statement 68, *Accounting and Financial Reporting for Pensions* which amends GASB Statement 27 and allows non-Federal entities (NFE) to claim only estimated pension costs in their financial

statements. OMB's revision will allow non-Federal entities to continue to claim pension costs that are both actual and funded.

200.431 Compensation

OMB appreciated the comments in support of the proposed changes. In response to several comments that asked for clarification, OMB is revising the final language to require state and local governments to be compliant with GASB #68 for pension costs. OMB would like to note that the cost associated with each fiscal year should be determined in accordance with GAAP.

The definition for ''Improper Payment'' has been revised to refer to the authoritative source for clarity, OMB Circular A–123—Management's Responsibility for Internal Control in Federal Agencies, Appendix C—Requirements for Payment Integrity Improvement. See above Section I for additional information on the changes to ''Improper Payment.''

Some commenters expressed that the reference to OMB Circular A–123 for the definition of ''Improper Payment'' added confusion and suggested retaining the original language. OMB considered this request and respectfully declined the comment in keeping with the practice to align the guidance with source documents, if possible.

III. Clarifying Requirements Regarding Areas of Misinterpretation

Following the publication of 2 CFR part 200, OMB received a substantial amount of questions from stakeholders requesting clarifications about key aspects of the guidance. In other instances, it has come to OMB's attention that the interpretation of certain provisions was not consistent with the intent of 2 CFR part 200. In response, OMB is publishing clarifications that are aimed at reducing recipient administration burden and ensuring consistent interpretation of guidance.

A. Responsibilities of the Pass-Through Entity To Address Only a Subrecipient's Audit Findings Related to Their Subaward

To clarify requirements regarding responsibility for audit findings, OMB revises 2 CFR 200.332 *Requirements for pass-through entities* to clarify that pass-through entities (PTE) are responsible for addressing only a subrecipient's audit findings that are specifically related to their subaward. For example, a PTE is not required to address all of the subrecipient's audit findings. In addition, the PTE may rely on the subrecipient's auditors and cognizant agency's oversight for routine audit follow-up and management decisions. These changes reduce the burden for PTEs by allowing a PTE to rely on the cognizant agency to address a subrecipient's entity-wide issues.

200.332 Requirements for Pass-Through Entities

OMB received substantial feedback relating to the changes made in this section. The two main changes for this section are related to the clarification of the pass-through entities responsibilities toward the establishment of the subrecipient indirect cost rates and the pass-through entities responsibilities for resolving the sub recipient's audit findings (§ 200.332(d)).

Although most commenters approved of the proposed changes regarding the pass-through entities responsibilities for the subrecipient indirect cost rates, some requested clarification on specific situations:

- Where the subrecipient has a federally approved indirect cost rate
- where the subrecipient receives funds from multiple pass-through entities from which it may be already established an indirect cost rate with one of the pass-through entity; or
- where the subrecipient decides to use the direct allocation method instead of the use of indirect cost rate for cost reimbursement.

OMB provides clarifications in the final language for all of the three situations above.

Most commenters supported the proposed changes to clarify the pass-through entities responsibility in the resolution of audit findings reported by the subrecipients and the required management decision letters to address the audit findings. Some commenters questioned the use of the term ''systemic findings'' to describe the findings that impact the whole organization. This section has been revised to streamline and clarify the original intent of the revision which limits the pass-through entity to review and resolve the audit findings that are specifically related to the subaward. OMB replaced the term ''systemic findings'' with ''cross-cutting findings.'' OMB also added that written confirmation by the subrecipients for corrective actions on audit findings can be used as a means for follow-up and monitoring of the subrecipient's performance.

B. Reducing Burden on Universities by Clarifying Timing of the Disclosure Statement

OMB is adding language to the timing of submission of the disclosure statement (DS–2), which is only required for institutions of higher education that meet certain thresholds as defined in 48 CFR 9903.202–1(f). This revision reduces burden while maintaining the requirement for institutions of higher education to implement policies that are in compliance with 2 CFR.

200.419 Cost Accounting Standards and Disclosure Statement

OMB received several comments in response to 2 CFR 200.419 that focused on concerns with the legal instruments that were subject to this part. In response to these concerns, the language was revised to provide clarification.

C. Response to Frequently Asked Questions Related to the Prior Release of 2 CFR

In July 2017, OMB developed and posted Frequently Asked Questions (FAQs) on the Chief Financial Officers Council website in response to stakeholder requests for clarification on the first publication of 2 CFR *(https://cfo.gov//wp-content/uploads/2017/08/July2017-UniformGuidanceFrequentlyAskedQuestions.pdf)*. Due to the volume of questions related to these topics, OMB is including revisions to clarify the following: The meaning of the words ''must'' and ''may'' as they pertain to requirements; applicability and documentation requirements when a non-Federal entity elects to charge the de minimis indirect cost rate of MTDC; PTE responsibilities related to indirect cost rates and audits; and applicability of 2 CFR to FAR based contracts. These proposed revisions are intended to improve clarity and reduce recipient burden by providing guidance on implementing 2 CFR.

The Words ''must'' and ''may'' as They Pertain to Requirements

All commenters that provided feedback on this section were in favor of incorporating the meaning of ''must'' and ''may'' within the guidance. One commenter suggested that the location for this change within the guidance could be within its own section. After consideration, OMB disagrees with the commenter and has determined that this change should remain in the applicability section of the guidance under the stated sub title.

De Minimis Indirect Cost Rate of MTDC Applicability and Documentation

See Section I (K) for additional information on the comments received.

PTE Responsibilities Related to Indirect Cost Rates and Audits

See Section III or additional information on the comments received.

Applicability of 2 CFR to FAR Based Contracts

Many commenters expressed confusion regarding the changes to this section. The intent of the changes to this section are to make clear that the FAR applies to Federal contracts awarded to non-Federal entities, and that these requirements supersede the requirements of 2 CFR part 200 in a Federal contract. Clarification was requested from a commenter to confirm if an audit conducted for a Cost Accounting Standards (CAS) applicable contract will take the place of a Single Audit and how an entity with multiple grants and only one CAS-contract would meet the requirements of the Single Audit Act.

The language clarified in § 200.101(c) to state that for CAS covered contracts, the CAS requirements regarding audit would supersede the audit requirements in subpart F. In addition, in the case where an entity receives many grants and one CAS covered contracts, the entity must comply to both the Single Audits for its grants and the CAS audit requirements for the CAS covered contract.

D. Applicability of Guidance to Federal Agencies

OMB is making changes to 2 CFR 200.101 *Applicability* to clarify that Federal awarding agencies may apply the requirements of 2 CFR part 200 to other Federal agencies, to the extent permitted by law. This change recognizes that there are instances when Federal awarding agencies or pass-through entities have the authority to issue Federal awards to Federal agencies and in these instances, the provisions of 2 CFR part 200 may be applied, as appropriate. This change is consistent with how for-profit entities, foreign public entities, or foreign organizations are treated in the Uniform Guidance.

200.101 Applicability

Several comments expressed concerns as to whether or not it is appropriate to include awards to Federal agencies in the scope of 2 CFR. It was determined that it was appropriate to include Federal agencies in the scope of 2 CFR as some Federal agencies are authorized to receive grants or cooperative agreements as direct recipients or subrecipients. This addition clarifies that subparts A through E of 2 CFR part 200 is applicable when determined by the Federal awarding agency. There will be no change from the proposed version.

E. Other Clarifications

Parts 25 and 170

Many commenters expressed concerns that parts 25 and 170 were confusing, inconsistent and needed to be edited for clarity. In response to these comments, parts 25 and 170 have been revised throughout with many technical corrections to add clarity and consistency.

200.110 Effective/Applicability Date

A number of comments, particularly from Federal agencies, expressed concern about the effective date for negotiated indirect cost rate agreements (NICRAs) in paragraph (b). The intent of this section is to retain the existing NICRAs until they are renegotiated and incorporate the requirements from the revision to 2 CFR upon renegotiation. Non-Federal entities with a NIRCA are expected to work with their cognizant agency for indirect costs as appropriate. OMB clarified the intent for 2 CFR 200.110(b). One Federal agency commenter stated that OMB should specify if the applicability date is for the entire guidance or for the revisions. OMB accepted this comment and made revisions accordingly.

200.200 Purpose

All commenters provided recommendations to revise this section to better align the terms ''competitive'' and ''non-competitive'' with the new terms ''discretionary'' and ''non-discretionary.'' OMB concurs with the recommendation to revise this section to align with other changes within the guidance. In response to commenters, OMB has removed 2 CFR 200.200(b) and made other technical corrections accordingly.

200.207 Standard Application Requirements

OMB received one comment on this section that was out of scope for the current set of revisions, and therefore the proposed language remains the same.

Out of Scope Comments

Many commenters submitted comments that were either not part of the scope of the effort, were not relevant to the revisions proposed, pertained to sections of the guidance that were not proposed to be revised, or would be a change too drastic that would warrant a need for the public to have an opportunity to provide input before finalizing. All comments within these categories were not accepted by OMB.

Changes From the Proposed Revisions Not Recommended

Comments received for several provisions within 2 CFR were reviewed, deliberated, and determined that no changes were needed from the proposed revisions. Some of these provisions within 2 CFR include the following:

- 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts
- 200.207 Standard application requirements
- 200.311 Real property
- 200.312 Federally-owned and exempt property
- 200.313 Equipment
- 200.314 Supplies
- 200.331 Subrecipient and contractor determinations
- 200.430 Compensation—personal services
- 400.458 Pre-award costs

200.402 Composition of Costs

Some commenters requested clarity and noted that the use of ''approved budget period'' is specific to Federal financial assistance when 2 CFR 200.402 would apply to both contracts and Federal financial assistance awarded to non-Federal entities. Another commenter suggested that further clarification is needed for what ''cost principle'' and ''budget period'' mean. Based on the vast array of comments received and the revised definitions for finalization, OMB decided to remove the language proposed for 2 CFR 200.402.

200.449 Interest

One comment was received for this provision. The commenter suggested that OMB provide a different example within 2 CFR 200.449 because lease contracts that transfer ownership are essentially debt financing. The commenter explains that the example is comparing debt financing to debt financing, which doesn't work for the intent. The commenter provided a suggested edit that would enable the example to remain and retain the original intent. OMB concurred with the commenter and made the suggested edit accordingly.

200.461 Publication and Printing Costs

All commenters requested clarity and suggested revisions to this provision. One commenter objected to specifying that costs must be charged to the last budget period, citing that printing costs

are historically charged at various stages of the award. One commenter noted that these costs have historically been allowable up until the closeout of the award. Edits were suggest to provide additional clarity in § 200.461(b)(3) to specify that The non-Federal entity may charge the Federal award during closeout. OMB concurs with this suggested revision and made the change accordingly.

200.507 Program-Specific Audits

One comment was received for 2 CFR 200.507. The commenter requested a clarification on the first phase to indicate ''in some cases'' rather than ''in many cases'' because Appendix VI of the 2019 Compliance Supplement only shows two current program specific audit guides. OMB concurred with the commenter and made the revision accordingly. The commenter provided a second recommendation to remove the 2014 beginning date and instead include the current reference to the Compliance Supplement appendix. OMB also concurs with this suggestion from the commenter and made the revisions.

200.515 Audit Reporting

The comments submitted for 2 CFR 200.515 provided suggestions for clarity. One commenter suggested reviewing this subsection against what the Federal Audit Clearinghouse is collecting in Part III: Information from the Schedule of Findings and Questioned Costs, Item 2. Financial Statements, to ensure an appropriate alignment between the regulation and the Form. Another commenter inquired about the intent of the revisions to this provision. OMB considered and discussed all the comments for clarity and made revisions accordingly.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The revision of 2 CFR is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibilities Act

The Regulatory Flexibility Act 5 U.S.C. 601, *et seq.,* requires a regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities. OMB expects this guidance to have a significant economic impact on a substantial number of such entities. There are some proposed revisions that may impose burden, however, there are more proposed revisions that reduce burden to small entities. When reviewing all the revisions, the burden that will be reduced for recipients is much greater than the burden imposed.

The revisions to 2 CFR are not applicable to Federal financial assistance awards issued prior to the effective dates provided in the **DATES** section of this Notice of Final Guidance, including financial assistance awards issued prior to those dates under the Coronavirus Aid, Relief, and Economic Support (CARES) Act of 2020 (Pub. L. 116–136). OMB plans to consult with applicable agencies to provide regulatory flexibility analyses in future revisions to 2 CFR and its subcomponents.

The applicability of Federal financial assistance in 2 CFR part 25 will be expanded beyond grants and cooperative agreements to include other types of financial assistance such as loans and insurance. This revision ensures compliance with FFATA, as amended by the DATA Act, and will impact small entities that voluntarily seek financial assistance. It will not have a significant impact on a substantial number of U.S. small entities as approximately 69,185 small entities who received awards for other types of financial assistance did not have a unique entity identifier in FY 2019, while the Small Business Administration's Office of Advocacy reported 30.7 million U.S. small businesses in that same calendar year. Currently, 2 CFR part 25 requires all non-Federal entities that apply for grants and cooperative agreements to register in the SAM. In alignment with FFATA, the guidance provides that all entities that apply directly to a Federal program for financial assistance such as loans and insurance must register in SAM, which requires the establishment of a unique entity identifier. Individuals who receive Federal financial assistance as a natural person remain exempt from this requirement. In practice, some Federal awarding agencies already require SAM registration for all types of Federal financial assistance and the change would make this practice consistent among agencies. OMB recognizes that this new requirement may be burdensome to small entities and there may be instances where it is appropriate for Federal awarding agencies to request an exception or delay implementation of this requirement for their programs. In response, Federal awarding agencies may exercise the flexibility provided in 2 CFR 25.110 to either exempt an applicant or recipient from this requirement or request an exception from OMB on a case-by-case for a class applicants or recipients, particularly in situations of national emergency such as natural disasters and pandemics.

As noted in the Paperwork Reduction Act section, as of July 1, 2020, there were 159,477 unique Federal financial assistance registrants in the SAM. According to data accessed from *USASpending.gov,* in FY 2018, approximately 2,952 small entities who received awards for other types of financial assistance did not have a unique entity identifier. Assuming that non-Federal entities with a unique entity identifier reported to *USASpending.gov* are already registered in SAM, this change will impact approximately 2,952 small entities annually. SAM registration is estimated to take 2.5 hours per response, which results in 7,380 burden hours annually.

The guidance also provides consistency among definitions and terms and proposes several provisions to increase transparency regarding Federal spending. These revisions are intended to reduce recipient burden and will not have a significant economic impact on a substantial number of small entities because they will affect Federal awarding agencies; they do not include any new requirements for non-Federal entities.

The guidance introduces a new provision to align with section 889 of the NDAA 2019, prohibition on certain telecommunication and video surveillance services or equipment. This statutory requirement will introduce burden to small entities that are prohibited from obligating or expending grant or loan funds to procure or obtain, extend or renew a contract to procure or obtain, or enter in a contract with, as identified in the NDAA 2019. Since this is a new legal requirement, the burden estimate is difficult to calculate. It will impact all unique entities awarded Federal financial assistance, of which 69,185 are small entities.

The guidance implements a new statute that requires applicants of Federal assistance to provide information on their owner, predecessor and subsidiary, including the Commercial and Government Entity (CAGE) Code and name of all predecessors, if applicable. This will not have a significant economic impact on a substantial number of small entities because small entities typically do not have a complex corporate structure requiring them to report information on their owner, predecessor, and

subsidiary. Further, the burden is minimal for a non-Federal entity to provide the name of its immediate owner and highest-level owner.

The NDAA for FY2018 increased the micro-purchase threshold from $3,500 to $10,000 and increased the simplified acquisition threshold from $100,000 to $250,000 for all recipients. OMB's revisions reduces burden and will not have a significant economic impact on a substantial number of small entities because it is likely to reduce burden for all non-Federal entities.

Paperwork Reduction Act

Consistent with the Regulatory Flexibility Act analysis discussion, the Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The guidance contains information collection requirements and will impact the current Information Collection Requests approved under OMB control number 3090–0290 managed by GSA. Accordingly, GSA will submit a request for approval to amend the existing Information Collection Requests for SAM registration requirements for Federal financial assistance recipients.

Annual Reporting Burden

The estimated annual reporting burden includes all possible entities for Federal financial assistance that may be required to register in SAM. The estimated annual reporting burden also includes entities that receive Federal financial assistance reported in *USASpending.gov* and either may or may not be required to register in SAM.

Previously, SAM only requires that applicants and recipients of Federal financial assistance in the form of grants register in the system. However, applicants and recipients are required to maintain accurate SAM registration at all times during which they have an active Federal award, an application, or a plan under consideration by a Federal awarding agency.

The burden estimates are approximations based on the best available data.

As of July 7, 2019, there were 159,477 unique Federal financial assistance registrants in SAM. However, not all registrants ultimately apply for, or receive, Federal financial assistance. OMB aggregated SAM data with Federal financial assistance recipient data from *USASpending.gov,* excluding grants, to determine the anticipated number of additional Federal financial assistance in SAM. OMB ran reports in *USASpending.gov* to identify the number of unique recipients of Federal financial assistance other than grants to isolate the total number of potential registrants in SAM as a result of the updates to the proposed guidance.

OMB removed duplicate recipients based on recipient Data Universal Numbering System Number (DUNS) numbers, from Dun & Bradstreet (D&B). At this time all Federal financial assistance recipients are required to register for DUNS numbers.

In FY 2019 there were 1,751 loan and 8,915 other Federal financial assistance recipients with unique DUNS numbers reported in *USASpending.gov.* Therefore, based on the number of entities with unique DUNS numbers that are registered in SAM (159,477), plus entities that receive loans (122) or other Federal financial assistance (8,915) reported in *USASpending.gov* that may not be reflected in SAM, the total number of entities that may be impacted by the proposed guidance associated Information Collection Requests under OMB control number 3090–0290 could be 172,084 registrants.

Public reporting burden for Information Collection Requests under OMB control number 3090–0290 is managed by the GSA and estimated to average 2.5 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.

The annual reporting burden is estimated as follows:

Respondents: 172,084.
Responses per Respondent: 1.
Total annual responses: 172,084.
Hours per Response: 2.5.
Total response Burden Hours: 430,210.

The guidance also requires that registrants for Federal financial assistance provide information on their owner, predecessor, and subsidiary, including the CAGE code and name of all predecessors, if applicable. This information is required to implement Sec. 852 of the NDAA of FY 2013, which requires that the FAPIIS include information on a non-Federal entity's parent, subsidiary, or successor entities. Non-Federal entities are already required to obtain a CAGE code for purposes of SAM registration. It is anticipated that including this information as part of SAM registration or for a renewal should not result in significant additional time. Public reporting burden for this collection of information is estimated to average 0.1 hours per response. Based on the burden estimates for the total number of SAM registrants indicated in the previous section, the annual reporting burden for this proposal is estimated as follows:

Respondents: 172,084.
Responses per respondent: 1.
Total annual responses: 172,084.
Preparation hours per response: 0.1.
Total response Burden Hours: 17,208.

List of Subjects

2 CFR Part 25

Administrative practice and procedure, Grant programs, Grants administration, Loan programs.

2 CFR Part 170

Colleges and universities, Grant programs, Hospitals, International organizations, Loan programs, Reporting and recordkeeping requirements.

2 CFR Part 183

Foreign aid, Grant programs, Grants administration, International organizations, Reporting and recordkeeping requirements.

2 CFR Part 200

Accounting, Colleges and universities, Grant programs, Grants administration, Hospitals, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, State and local governments.

Timothy F. Soltis,
Deputy Controller.

For the reasons stated in the preamble, the Office of Management and Budget amends 2 CFR chapters I and II as set forth below:

PART 25—UNIVERSAL IDENTIFIER AND SYSTEM FOR AWARD MANAGEMENT

■ 1. The authority citation for part 25 continues to read as follows:

Authority: Pub. L. 109–282; 31 U.S.C. 6102.

■ 2. Amend § 25.100 by revising the introductory text and paragraph (a) to read as follows:

§ 25.100 Purposes of this part.

This part provides guidance to Federal awarding agencies to establish:

(a) The unique entity identifier as a universal identifier for Federal financial assistance applicants, as well as recipients and their direct subrecipients, and;

* * * * *

■ 3. Revise § 25.105 to read as follows:

§ 25.105 Types of awards to which this part applies.

This part applies to a Federal awarding agency's grants, cooperative agreements, loans, and other types of Federal financial assistance as defined in § 25.406.

■ 4. Revise § 25.110 to read as follows:

§ 25.110 Exceptions to this part.

(a) *General.* Through a Federal awarding agency's implementation of the guidance in this part, this part applies to all applicants and recipients of Federal awards, other than those exempted by statute or exempted in paragraphs (b) and (c) of this section that apply for or receive agency awards.

(b) *Exceptions for individuals.* None of the requirements in this part apply to an individual who applies for or receives Federal financial assistance as a natural person (*i.e.,* unrelated to any business or nonprofit organization he or she may own or operate in his or her name).

(c) *Other exceptions.* (1) Under a condition identified in paragraph (c)(2) of this section, a Federal awarding agency may exempt an applicant or recipient from an applicable requirement to obtain a unique entity identifier and register in the SAM, or both.

(i) In that case, the Federal awarding agency must use a generic unique entity identifier in data it reports to *USAspending.gov* if reporting for a prime award to the recipient is required by the Federal Funding Accountability and Transparency Act (Pub. L. 109–282, hereafter cited as ''Transparency Act'').

(ii) Federal awarding agency use of a generic unique entity identifier should be used rarely for prime award reporting because it prevents prime awardees from being able to fulfill the subaward or executive compensation reporting required by the Transparency Act.

(2) The conditions under which a Federal awarding agency may exempt an applicant or recipient are—

(i) For any applicant or recipient, if the Federal awarding agency determines that it must protect information about the entity from disclosure if it is in the national security or foreign policy interests of the United States, or to avoid jeopardizing the personal safety of the applicant or recipient's staff or clients.

(ii) For a foreign organization or foreign public entity applying for or receiving a Federal award or subaward for a project or program performed outside the United States valued at less than $25,000, if the Federal awarding agency deems it to be impractical for the entity to comply with the requirement(s). This exemption must be determined by the Federal awarding agency on a case-by-case basis while utilizing a risk-based approach and does not apply if subawards are anticipated.

(iii) For an applicant, if the Federal awarding agency makes a determination that there are exigent circumstances that prohibit the applicant from receiving a unique entity identifier and completing SAM registration prior to receiving a Federal award. In these instances, Federal awarding agencies must require the recipient to obtain a unique entity identifier and complete SAM registration within 30 days of the Federal award date.

(3) Federal awarding agencies' use of generic unique entity identifier, as described in paragraphs (c)(1) and (2) of this section, should be rare. Having a generic unique entity identifier limits a recipient's ability to use Governmentwide systems that are needed to comply with some reporting requirements.

(d) *Class exceptions.* OMB may allow exceptions for classes of Federal awards, applicants, and recipients subject to the requirements of this part when exceptions are not prohibited by statute.

§ 25.115 [Removed]

■ 5. Remove § 25.115.

■ 6. Revise § 25.200 to read as follows:

§ 25.200 Requirements for notice of funding opportunities, regulations, and application instructions.

(a) Each Federal awarding agency that awards the types of Federal financial assistance defined in § 25.406 must include the requirements described in paragraph (b) of this section in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants that is issued on or after August 13, 2020.

(b) The notice of funding opportunity, regulation, or other issuance must require each applicant that applies and does not have an exemption under § 25.110 to:

(1) Be registered in the SAM prior to submitting an application or plan;

(2) Maintain an active SAM registration with current information, including information on a recipient's immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency; and

(3) Provide its unique entity identifier in each application or plan it submits to the Federal awarding agency.

(c) For purposes of this policy:

(1) The applicant meets the Federal awarding agency's eligibility criteria and has the legal authority to apply and to receive the Federal award. For example, if a consortium applies for a Federal award to be made to the consortium as the recipient, the consortium must have a unique entity identifier. If a consortium is eligible to receive funding under a Federal awarding agency program but the agency's policy is to make the Federal award to a lead entity for the consortium, the unique entity identifier of the lead applicant will be used.

(2) A notice of funding opportunity is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a ''program announcement,'' ''notice of funding availability,'' ''broad agency announcement,'' ''research announcement,'' ''solicitation,'' or some other term.

(3) To remain registered in the SAM database after the initial registration, the applicant is required to review and update its information in the SAM database on an annual basis from the date of initial registration or subsequent updates to ensure it is current, accurate and complete.

■ 7. Revise § 25.205 to read as follows:

§ 25.205 Effect of noncompliance with a requirement to obtain a unique entity identifier or register in the SAM.

(a) A Federal awarding agency may not make a Federal award or financial modification to an existing Federal award to an applicant or recipient until the entity has complied with the requirements described in § 25.200 to provide a valid unique entity identifier and maintain an active SAM registration with current information (other than any requirement that is not applicable because the entity is exempted under § 25.110).

(b) At the time a Federal awarding agency is ready to make a Federal award, if the intended recipient has not complied with an applicable requirement to provide a unique entity identifier or maintain an active SAM registration with current information, the Federal awarding agency:

(1) May determine that the applicant is not qualified to receive a Federal award; and

(2) May use that determination as a basis for making a Federal award to another applicant.

■ 8. Revise § 25.210 to read as follows:

§ 25.210 Authority to modify agency application forms or formats.

To implement the policies in §§ 25.200 and 25.205, a Federal awarding agency may add a unique entity identifier field to information collections previously approved by OMB, without having to obtain further approval to add the field.

■ 9. Revise § 25.215 to read as follows:

§ 25.215 Requirements for agency information systems.

Each Federal awarding agency that awards Federal financial assistance (as defined in § 25.406) must ensure that systems processing information related to the Federal awards, and other systems as appropriate, are able to accept and use the unique entity identifier as the universal identifier for Federal financial assistance applicants and recipients.

■ 10. Revise § 25.220 to read as follows:

§ 25.220 Use of award term.

(a) To accomplish the purposes described in § 25.100, a Federal awarding agency must include in each Federal award (as defined in § 25.405) the award term in appendix A to this part.

(b) A Federal awarding agency may use different letters and numbers than those in appendix A to this part to designate the paragraphs of the Federal award term, if necessary, to conform the system of paragraph designations with the one used in other terms and conditions in the Federal awarding agency's Federal awards.

■ 11. Revise subpart C to read as follows:

Subpart C—Recipient Requirements of Subrecipients

§ 25.300 Requirement for recipients to ensure subrecipients have a unique entity identifier.

(a) A recipient may not make a subaward to a subrecipient unless that subrecipient has obtained and provided to the recipient a unique entity identifier. Subrecipients are not required to complete full SAM registration to obtain a unique entity identifier.

(b) A recipient must notify any potential subrecipients that the recipient cannot make a subaward unless the subrecipient has obtained a unique entity identifier as described in paragraph (a) of this section.

■ 12. Add subpart D to read as follows:

Subpart D—Definitions

Sec

25.400 Applicant.
25.401 Federal Awarding Agency.
25.405 Federal Award.
25.406 Federal financial assistance.
25.407 Recipient.
25.410 System for Award Management (SAM).
25.415 Unique entity identifier.
25.425 For-profit organization.
25.430 Foreign organization.
25.431 Foreign public entity.
25.432 Highest level owner.
25.433 Indian Tribe (or ''Federally recognized Indian Tribe'').
25.440 Local government.
25.443 Non-Federal entity.
25.445 Nonprofit organization.
25.447 Predecessor.
25.450 State.
25.455 Subaward.
25.460 Subrecipient.
25.462 Subsidiary.
25.465 Successor.

Subpart D—Definitions

§ 25.400 Applicant.

Applicant, for the purposes of this part, means a non-Federal entity or Federal agency that applies for Federal awards.

§ 25.401 Federal Awarding Agency.

Federal Awarding Agency has the meaning given in 2 CFR 200.1.

§ 25.405 Federal Award.

Federal Award, for the purposes of this part, means an award of Federal financial assistance that a non-Federal entity or Federal agency received from a Federal awarding agency.

§ 25.406 Federal financial assistance.

(a) *Federal financial assistance,* for the purposes of this part, means assistance that entities received or administer in the form of:

(1) Grant;

(2) Cooperative agreements (which does not include a cooperative research and development agreement pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710a));

(3) Loans;

(4) Loan guarantees;

(5) Subsidies;

(6) Insurance;

(7) Food commodities;

(8) Direct appropriations;

(9) Assessed or voluntary contributions; or

(10) Any other financial assistance transaction that authorizes the non-Federal entity's expenditure of Federal funds.

(b) *Federal financial assistance,* for the purposes of this part, does not include:

(1) Technical assistance, which provides services in lieu of money; and

(2) A transfer of title to federally owned property provided in lieu of money, even if the award is called a grant.

§ 25.407 Recipient.

Recipient, for the purposes of this part, means a non-Federal entity or Federal agency that received a Federal award. This term also includes a non-Federal entity who administers Federal financial assistance awards on behalf of a Federal agency.

§ 25.410 System for Award Management (SAM).

System for Award Management (SAM) has the meaning given in paragraph C.1 of the award term in appendix A to this part.

§ 25.415 Unique entity identifier.

Unique entity identifier has the meaning given in paragraph C.2 of the award term in appendix A to this part.

§ 25.425 For-profit organization.

For-profit organization means a non-Federal entity organized for profit. It includes, but is not limited to:

(a) An ''S corporation'' incorporated under Subchapter S of the Internal Revenue Code;

(b) A corporation incorporated under another authority;

(c) A partnership;

(d) A limited liability corporation or partnership; and

(e) A sole proprietorship.

§ 25.430 Foreign organization.

Foreign organization has the meaning given in 2 CFR 200.1.

§ 25.431 Foreign public entity.

Foreign public entity has the meaning given in 2 CFR 200.1.

§ 25.432 Highest level owner.

Highest level owner has the meaning given in 2 CFR 200.1.

§ 25.433 Indian Tribe (or ''federally recognized Indian Tribe'').

Indian Tribe (or ''federally recognized Indian Tribe'') has the meaning given in 2 CFR 200.1.

§ 25.440 Local government.

Local government has the meaning given in 2 CFR 200.1.

§ 25.443 Non-Federal entity.

Non-Federal entity, as it is used in this part, has the meaning given in paragraph C.3 of the award term in appendix A to this part.

§ 25.445 Nonprofit organization.

Non-Federal organization, has the meaning given in 2 CFR 200.1.

§ 25.447 Predecessor.

Predecessor means a non-Federal entity that is replaced by a successor and includes any predecessors of the predecessor.

§ 25.450 State.

State has the meaning given in 2 CFR 200.1.

§ 25.455 Subaward.

Subaward has the meaning given in 2 CFR 200.1.

§ 25.460 Subrecipient.

Subrecipient has the meaning given in 2 CR 200.1.

§ 25.462 Subsidiary.

Subsidiary has the meaning given in 2 CFR 200.1.

§ 25.465 Successor.

Successor means a non-Federal entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term ''successor'' does not include new offices or divisions of the same company or a company that only changes its name.

■ 13. Revise appendix A to part 25 to read as follows:

Appendix A to Part 25—Award Term

I. System for Award Management and Universal Identifier Requirements

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

B. Requirement for Unique Entity Identifier

If you are authorized to make subawards under this Federal award, you:

1. Must notify potential subrecipients that no entity (*see* definition in paragraph C of this award term) may receive a subaward from you until the entity has provided its Unique Entity Identifier to you.

2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

C. Definitions

For purposes of this term:

1. *System for Award Management (SAM)* means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM internet site (currently at *https://www.sam.gov*).

2. *Unique Entity Identifier* means the identifier assigned by SAM to uniquely identify business entities.

3. *Entity* includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following, for purposes of this part:

a. A foreign organization;

b. A foreign public entity;

c. A domestic for-profit organization; and

d. A domestic or foreign for-profit organization; and

d. A Federal agency.

4. *Subaward* has the meaning given in 2 CFR 200.1.

5. *Subrecipient* has the meaning given in 2 CFR 200.1.

PART 170—REPORTING SUBAWARD AND EXECUTIVE COMPENSATION INFORMATION

■ 14. The authority citation for part 170 continues to read as follows:

Authority: Pub. L. 109–282; 31 U.S.C. 6102.

■ 15. Revise § 170.100 read as follows:

§ 170.100 Purposes of this part.

This part provides guidance to Federal awarding agencies on reporting Federal awards to establish requirements for recipients' reporting of information on subawards and executive total compensation, as required by the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), as amended by section 6202 of Public Law 110–252, hereafter referred to as ''the Transparency Act''.

■ 16. Revise § 170.105 to read as follows:

§ 170.105 Types of awards to which this part applies.

This part applies to Federal awarding agency's grants, cooperative agreements, loans, and other forms of Federal financial assistance subject to the Transparency Act, as defined in § 170.320.

■ 17. Revise § 170.110 to read as follows:

§ 170.110 Exceptions to which this part applies.

(a) *General.* Through a Federal awarding agency's implementation of the guidance in this part, this part applies to recipients, other than those exempted by law or excepted in accordance with paragraphs (b) and (c) of this section, that—

(1) Apply for or receive Federal awards; or

(2) Receive subawards under Federal awards.

(b) *Exceptions.* (1) None of the requirements in this part apply to an individual who applies for or receives a Federal award as a natural person (*i.e.,* unrelated to any business or nonprofit organization he or she may own or operate in his or her name).

(2) None of the requirements regarding reporting names and total compensation of a non-Federal entity's five most highly compensated executives apply unless in the non-Federal entity's preceding fiscal year, it received—

(i) 80 percent or more of its annual gross revenue in Federal procurement contracts (and subcontracts) and Federal financial assistance awards subject to the Transparency Act, as defined at § 170.320 (and subawards); and

(ii) $25,000,000 or more in annual gross revenue from Federal procurement contracts (and subcontracts) and Federal financial assistance awards subject to the Transparency Act, as defined at § 170.320; and

(3) The public does not have access to information about the compensation of senior executives, unless otherwise publicly available, through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(c) *Exceptions for classes of Federal awards or recipients.* OMB may allow exceptions for classes of Federal awards or recipients subject to the requirements of this part when exceptions are not prohibited by statute.

§ 170.115 [Removed]

■ 18. Remove § 170.115.

■ 19. Revise § 170.200 to read as follows:

§ 170.200 Federal awarding agency reporting requirements.

(a) Federal awarding agencies are required to publicly report Federal awards that equal or exceed the micro-purchase threshold and publish the required information on a public-facing, OMB-designated, governmentwide website and follow OMB guidance to support Transparency Act implementation.

(b) Federal awarding agencies that obtain post-award data on subaward obligations outside of this policy should take the necessary steps to ensure that

their recipients are not required, due to the combination of agency-specific and Transparency Act reporting requirements, to submit the same or similar data multiple times during a given reporting period.

■ 20. Add § 170.210 to read as follows:

§ 170.210 Requirements for notices of funding opportunities, regulations, and application instructions.

(a) Each Federal awarding agency that makes awards of Federal financial assistance subject to the Transparency Act must include the requirements described in paragraph (b) of this section in each notice of funding opportunity, regulation, or other issuance containing instructions for applicants under which Federal awards may be made that are subject to Transparency Act reporting requirements, and is issued on or after the effective date of this part.

(b) The notice of funding opportunity, regulation, or other issuance must require each non-Federal entity that applies for Federal financial assistance and that does not have an exception under § 170.110(b) to have the necessary processes and systems in place to comply with the reporting requirements should they receive Federal funding.

■ 21. Revise § 170.220 to read as follows:

§ 170.220 Award term.

(a) To accomplish the purposes described in § 170.100, a Federal awarding agency must include the award term in appendix A to this part in each Federal award to a recipient under which the total funding is anticipated to equal or exceed $30,000 in Federal funding.

(b) A Federal awarding agency, consistent with paragraph (a) of this section, is not required to include the award term in appendix A to this part if it determines that there is no possibility that the total amount of Federal funding under the Federal award will equal or exceed $30,000. However, the Federal awarding agency must subsequently modify the award to add the award term if changes in circumstances increase the total Federal funding under the award is anticipated to equal or exceed $30,000 during the period of performance.

■ 22. Revise § 170.300 to read as follows:

§ 170.300 Federal agency.

Federal agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

■ 23. Add § 170.301 to read as follows:

§ 170.301 Federal awarding agency.

Federal awarding agency has the meaning given in 2 CFR 200.1.

■ 24. Revise § 170.305 to read as follows:

§ 170.305 Federal award.

Federal award, for the purposes of this part, means an award of Federal financial assistance that a recipient receives directly from a Federal awarding agency.

■ 25. Add § 170.307 to read as follows:

§ 170.307 Foreign organization.

Foreign organization has the meaning given in 2 CFR 200.1.

■ 26. Add § 170.308 to read as follows:

§ 170.308 Foreign public entity.

Foreign public entity has the meaning given in 2 CFR 200.1.

■ 27. Revise § 170.310 to read as follows:

§ 170.310 Non-Federal entity.

Non-Federal entity has the meaning given in 2 CFR 200.1 and also includes all of the following, for the purposes of this part:

(a) A foreign organization;

(b) A foreign public entity; and

(c) A domestic or foreign for-profit organization.

■ 28. Amend § 170.320 by correctly designating the paragraph (b) that follows paragraph (j) as paragraph (k) and by revising paragraphs (k) introductory text and (k)(2) to read as follows:

§ 170.320 Federal financial assistance subject to the Transparency Act.

* * * * *

(k) Federal financial assistance subject to the Transparency Act, does not include—

* * * * *

(2) A transfer of title to federally-owned property provided in lieu of money, even if the award is called a grant;

* * * * *

■ 29. Add § 170.322 to read as follows:

§ 170.322 Recipient.

Recipient, for the purposes of this part, means a non-Federal entity or Federal agency that received a Federal award.

■ 30. Revise § 170.325 to read as follows:

§ 170.325 Subaward.

Subaward has the meaning given in 2 CFR 200.1.

■ 31. Revise appendix A to part 170 to read as follows:

Appendix A to Part 170—Award Term

I. Reporting Subawards and Executive Compensation

a. *Reporting of first-tier subawards.*

Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds $30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).

2. *Where and when to report.*

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to *http://www.fsrs.gov.*

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at *http://www.fsrs.gov specify.*

b. *Reporting total compensation of recipient executives for non-Federal entities.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this Federal award equals or exceeds $30,000 as defined in 2 CFR 170.320;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at *https://www.sam.gov.*

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. *Reporting of Total Compensation of Subrecipient Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and,

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.,* between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions.*

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions.* For purposes of this award term:

1. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

2. Non-Federal *entity* means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization; and,

iv. A domestic or foreign for-profit organization

3. *Executive* means officers, managing partners, or any other employees in management positions.

4. *Subaward:*

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. *Subrecipient* means a non-Federal entity or Federal agency that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)).

■ 31a. Add part 183 to read as follows:

PART 183—NEVER CONTRACT WITH THE ENEMY

Sec.

183.5 Purpose of this part.
183.10 Applicability.
183.15 Responsibilities of Federal awarding agencies.
183.20 Reporting responsibilities of Federal awarding agencies.
183.25 Responsibilities of recipients.
183.30 Access to records.
183.35 Definitions.

APPENDIX A TO PART 183—CLAUSES FOR AWARD AGREEMENTS

Authority: Pub. L. 113–291.

§ 183.5 Purpose of this part.

This part provides guidance to Federal awarding agencies on the implementation of the Never Contract with the Enemy requirements applicable to certain grants and cooperative agreements, as specified in subtitle E, title VIII of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113–291), as amended by Sec. 822 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92).

§ 183.10 Applicability.

(a) This part applies only to grants and cooperative agreements that are expected to exceed $50,000 and that are performed outside the United States, including U.S. territories, and that are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. It does not apply to the authorized intelligence or law enforcement activities of the Federal Government.

(b) All elements of this part are applicable until the date of expiration as provided in law.

§ 183.15 Responsibilities of Federal awarding agencies.

(a) Prior to making an award for a covered grant or cooperative agreement (see also § 183.35), the Federal awarding agency must check the current list of prohibited or restricted persons or entities in the System Award Management (SAM) Exclusions.

(b) The Federal awarding agency may include the award term provided in appendix A of this part in all covered grant and cooperative agreement awards in accordance with Never Contract with the Enemy.

(c) A Federal awarding agency may become aware of a person or entity that:

(1) Provides funds, including goods and services, received under a covered grant or cooperative agreement of an executive agency directly or indirectly to covered persons or entities; or

(2) Fails to exercise due diligence to ensure that none of the funds, including goods and services, received under a covered grant or cooperative agreement of an executive agency are provided directly or indirectly to covered persons or entities.

(d) When a Federal awarding agency becomes aware of such a person or entity, it may do any of the following actions:

(1) Restrict the future award of all Federal contracts, grants, and cooperative agreements to the person or entity based upon concerns that Federal awards to the entity would provide

grant funds directly or indirectly to a covered person or entity.

(2) Terminate any contract, grant, or cooperative agreement to a covered person or entity upon becoming aware that the recipient has failed to exercise due diligence to ensure that none of the award funds are provided directly or indirectly to a covered person or entity.

(3) Void in whole or in part any grant, cooperative agreement or contracts of the executive agency concerned upon a written determination by the head of contracting activity or other appropriate official that the grant or cooperative agreement provides funds directly or indirectly to a covered person or entity.

(e) The Federal awarding agency must notify recipients in writing regarding its decision to restrict all future awards and/or to terminate or void a grant or cooperative agreement. The agency must also notify the recipient in writing about the recipient's right to request an administrative review (using the agency's procedures) of the restriction, termination, or void of the grant or cooperative agreement within 30 days of receiving notification.

§ 183.20 Reporting responsibilities of Federal awarding agencies.

(a) If a Federal awarding agency restricts all future awards to a covered person or entity, it must enter information on the ineligible person or entity into SAM Exclusions as a prohibited or restricted source pursuant to Subtitle E, Title VIII of the NDAA for FY 2015 (Pub. L. 113–291).

(b) When a Federal awarding agency terminates or voids a grant or cooperative agreement due to Never Contract with the Enemy, it must report the termination as a Termination for Material Failure to Comply in the Office of Management and Budget (OMB)-designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)).

(c) The Federal awarding agency shall document and report to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies):

(1) Any action to restrict all future awards or to terminate or void an award with a covered person or entity.

(2) Any decision not to restrict all future awards, terminate, or void an award along with the agency's reasoning for not taking one of these actions after the agency became aware that a person or entity is a prohibited or restricted source.

(d) Each report referenced in paragraph (c)(1) of this section shall include:

(1) The executive agency taking such action.

(2) An explanation of the basis for the action taken.

(3) The value of the terminated or voided grant or cooperative agreement.

(4) The value of all grants and cooperative agreements of the executive agency with the person or entity concerned at the time the grant or cooperative agreement was terminated or voided.

(e) Each report referenced in paragraph (c)(2) of this section shall include:

(1) The executive agency concerned.

(2) An explanation of the basis for not taking the action.

(f) For each instance in which an executive agency exercised the additional authority to examine recipient and lower tier entity (*e.g.,* subrecipient or contractor) records, the agency must report in writing to the head of the executive agency concerned (or the designee of such head) and the commander of the covered combatant command concerned (or specific deputies) the following:

(1) An explanation of the basis for the action taken; and

(2) A summary of the results of any examination of records.

§ 183.25 Responsibilities of recipients.

(a) Recipients of covered grants or cooperative agreements must fulfill the requirements outlined in the award term provided in appendix A to this part.

(b) Recipients must also flow down the provisions in award terms covered in appendix A to this part to all contracts and subawards under the award.

§ 183.30 Access to records.

In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards, to the extent necessary, to ensure that funds, including supplies and services, received under a covered grant or cooperative agreement (see § 183.35) are not provided directly or indirectly to a covered person or entity in accordance with Never Contract with the Enemy. The Federal awarding agency may only exercise this authority upon a written determination by the Federal awarding agency that relies on a finding by the commander of a covered combatant command that there is reason to believe that funds, including supplies and services, received under the grant or cooperative agreement may have been provided directly or indirectly to a covered person or entity.

§ 183.35 Definitions.

Terms used in this part are defined as follows:

Contingency operation, as defined in 10 U.S.C. 101a, means a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under 10 U.S.C. 688, 12301a, 12302, 12304, 12304a, 12305, 12406 of 10 U.S.C. chapter 15, 14 U.S.C. 712 or any other provision of law during a war or during a national emergency declared by the President or Congress.

Covered combatant command means the following:

(1) The United States Africa Command.

(2) The United States Central Command.

(3) The United States European Command.

(4) The United States Pacific Command.

(5) The United States Southern Command.

(6) The United States Transportation Command.

Covered grant or cooperative agreement means a grant or cooperative agreement, as defined in 2 CFR 200.1 with an estimated value in excess of $50,000 that is performed outside the United States, including its possessions and territories, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. Except for U.S. Department of Defense grants and cooperative agreements that were awarded on or before December 19, 2017, that will be performed in the United States Central Command, where the estimated value is in excess of $100,000.

Covered person or entity means a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

Appendix A to Part 183—Award Terms for Never Contract With the Enemy

Federal awarding agencies may include the following award terms in all

awards for covered grants and cooperative agreements in accordance with Never Contract with the Enemy:

Term 1

Prohibition on Providing Funds to the Enemy

(a) The recipient must—

(1) Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR 180.300 prior to issuing a subaward or contract and;

(2) Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.

(b) The recipient may include the substance of this clause, including paragraph (a) of this clause, in subawards under this grant or cooperative agreement that have an estimated value over $50,000 and will be performed outside the United States, including its outlying areas.

(c) The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (a) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

(End of term)

Term 2

Additional Access to Recipient Records

(a) In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations.

(b) The substance of this clause, including this paragraph (b), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over $50,000 and will be performed outside the United States, including its outlying areas.

(End of term)

PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 32. The authority citation for part 200 continues to read as follows:

Authority: 31 U.S.C. 503

■ 33. Amend § 200.0 by removing the acronym CFDA, revising the acronym MTDC, adding in alphabetical order the acronym NFE, and revising the acronym SAM to read as follows:

§ 200.0 Acronyms.

* * * * *

MTDC Modified Total Direct Cost

NFE Non-Federal Entity

* * * * *

SAM System for Award Management

* * * * *

■ 34. Revise § 200.1 to read as follows:

§ 200.1 Definitions.

These are the definitions for terms used in this part. Different definitions may be found in Federal statutes or regulations that apply more specifically to particular programs or activities. These definitions could be supplemented by additional instructional information provided in governmentwide standard information collections. For purposes of this part, the following definitions apply:

Acquisition cost means the cost of the asset including the cost to ready the asset for its intended use. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Acquisition costs for software includes those development costs capitalized in accordance with generally accepted accounting principles (GAAP). Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in or excluded from the acquisition cost in accordance with the non-Federal entity's regular accounting practices.

Advance payment means a payment that a Federal awarding agency or pass-through entity makes by any appropriate payment mechanism, including a predetermined payment schedule, before the non-Federal entity disburses the funds for program purposes.

Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective(s), in reasonable proportion to the benefit provided or other equitable relationship. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

Assistance listings refers to the publicly available listing of Federal assistance programs managed and administered by the General Services Administration, formerly known as the Catalog of Federal Domestic Assistance (CFDA).

Assistance listing number means a unique number assigned to identify a Federal Assistance Listings, formerly known as the CFDA Number.

Assistance listing program title means the title that corresponds to the Federal Assistance Listings Number, formerly known as the CFDA program title.

Audit finding means deficiencies which the auditor is required by § 200.516(a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under subpart F of this part.

Auditor means an auditor who is a public accountant or a Federal, State, local government, or Indian tribe audit organization, which meets the general standards specified for external auditors in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of nonprofit organizations.

Budget means the financial plan for the Federal award that the Federal awarding agency or pass-through entity approves during the Federal award process or in subsequent amendments to the Federal award. It may include the Federal and non-Federal share or only the Federal share, as determined by the Federal awarding agency or pass-through entity.

Budget period means the time interval from the start date of a funded portion

of an award to the end date of that funded portion during which recipients are authorized to expend the funds awarded, including any funds carried forward or other revisions pursuant to § 200.308.

Capital assets means:

(1) Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. Capital assets include:

(i) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and

(ii) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

(2) For purpose of this part, capital assets do not include intangible right-to-use assets (per GASB) and right-to-use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property and/or equipment for a period of time under a lease contract. See also § 200.465.

Capital expenditures means expenditures to acquire capital assets or expenditures to make additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life.

Central service cost allocation plan means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a State or local government or Indian tribe on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

Claim means, depending on the context, either:

(1) A written demand or written assertion by one of the parties to a Federal award seeking as a matter of right:

(i) The payment of money in a sum certain;

(ii) The adjustment or interpretation of the terms and conditions of the Federal award; or

(iii) Other relief arising under or relating to a Federal award.

(2) A request for payment that is not in dispute when submitted.

Class of Federal awards means a group of Federal awards either awarded under a specific program or group of programs or to a specific type of non-Federal entity or group of non-Federal entities to which specific provisions or exceptions may apply.

Closeout means the process by which the Federal awarding agency or pass-through entity determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 200.344.

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. ''Other clusters'' are as defined by OMB in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an ''other cluster,'' a State must identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 200.332(a). A cluster of programs must be considered as one program for determining major programs, as described in § 200.518, and, with the exception of R&D as described in § 200.501(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out the responsibilities described in § 200.513(a). The cognizant agency for audit is not necessarily the same as the cognizant agency for indirect costs. A list of cognizant agencies for audit can be found on the Federal Audit Clearinghouse (FAC) website.

Cognizant agency for indirect costs means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this part on behalf of all Federal agencies. The cognizant agency for indirect cost is not necessarily the same as the cognizant agency for audit. For assignments of cognizant agencies see the following:

(1) For Institutions of Higher Education (IHEs): Appendix III to this part, paragraph C.11.

(2) For nonprofit organizations: Appendix IV to this part, paragraph C.2.a.

(3) For State and local governments: Appendix V to this part, paragraph F.1.

(4) For Indian tribes: Appendix VII to this part, paragraph D.1.

Compliance supplement means an annually updated authoritative source for auditors that serves to identify existing important compliance requirements that the Federal Government expects to be considered as part of an audit. Auditors use it to understand the Federal program's objectives, procedures, and compliance requirements, as well as audit objectives and suggested audit procedures for determining compliance with the relevant Federal program.

Computing devices means machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or ''peripherals'') for printing, transmitting and receiving, or storing electronic information. See also the definitions of *supplies* and *information technology systems* in this section.

Contract means, for the purpose of Federal financial assistance, a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out the project or program under a Federal award. For additional information on subrecipient and contractor determinations, see § 200.331. See also the definition of *subaward* in this section.

Contractor means an entity that receives a contract as defined in this section.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency and a recipient or a pass-through entity and a subrecipient that, consistent with 31 U.S.C. 6302–6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal Government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(ii) An agreement that provides only:

(A) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D) A loan guarantee; or

(E) Insurance.

Cooperative audit resolution means the use of audit follow-up techniques which promote prompt corrective action by improving communication, fostering collaboration, promoting trust, and developing an understanding between the Federal agency and the non-Federal entity. This approach is based upon:

(1) A strong commitment by Federal agency and non-Federal entity leadership to program integrity;

(2) Federal agencies strengthening partnerships and working cooperatively with non-Federal entities and their auditors; and non-Federal entities and their auditors working cooperatively with Federal agencies;

(3) A focus on current conditions and corrective action going forward;

(4) Federal agencies offering appropriate relief for past noncompliance when audits show prompt corrective action has occurred; and

(5) Federal agency leadership sending a clear message that continued failure to correct conditions identified by audits which are likely to cause improper payments, fraud, waste, or abuse is unacceptable and will result in sanctions.

Corrective action means action taken by the auditee that:

(1) Corrects identified deficiencies;

(2) Produces recommended improvements; or

(3) Demonstrates that audit findings are either invalid or do not warrant auditee action.

Cost allocation plan means central service cost allocation plan or public assistance cost allocation plan.

Cost objective means a program, function, activity, award, organizational subdivision, contract, or work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capital projects, etc. A cost objective may be a major function of the non-Federal entity, a particular service or project, a Federal award, or an indirect (Facilities & Administrative (F&A)) cost activity, as described in subpart E of this part. See also the definitions of *final cost objective* and *intermediate cost objective* in this section.

Cost sharing or matching means the portion of project costs not paid by Federal funds or contributions (unless otherwise authorized by Federal statute). See also § 200.306.

Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal awarding agency or pass-through entity).

Disallowed costs means those charges to a Federal award that the Federal awarding agency or pass-through entity determines to be unallowable, in accordance with the applicable Federal statutes, regulations, or the terms and conditions of the Federal award.

Discretionary award means an award in which the Federal awarding agency, in keeping with specific statutory authority that enables the agency to exercise judgment (''discretion''), selects the recipient and/or the amount of Federal funding awarded through a competitive process or based on merit of proposals. A discretionary award may be selected on a non-competitive basis, as appropriate.

Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or $5,000. See also the definitions of *capital assets, computing devices, general purpose equipment, information technology systems, special purpose equipment,* and *supplies* in this section.

Expenditures means charges made by a non-Federal entity to a project or program for which a Federal award was received.

(1) The charges may be reported on a cash or accrual basis, as long as the methodology is disclosed and is consistently applied.

(2) For reports prepared on a cash basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense charged;

(iii) The value of third-party in-kind contributions applied; and

(iv) The amount of cash advance payments and payments made to subrecipients.

(3) For reports prepared on an accrual basis, expenditures are the sum of:

(i) Cash disbursements for direct charges for property and services;

(ii) The amount of indirect expense incurred;

(iii) The value of third-party in-kind contributions applied; and

(iv) The net increase or decrease in the amounts owed by the non-Federal entity for:

(A) Goods and other property received;

(B) Services performed by employees, contractors, subrecipients, and other payees; and

(C) Programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

Federal agency means an ''agency'' as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

Federal Audit Clearinghouse (FAC) means the clearinghouse designated by OMB as the repository of record where non-Federal entities are required to transmit the information required by subpart F of this part.

Federal award has the meaning, depending on the context, in either paragraph (1) or (2) of this definition:

(1)(i) The Federal financial assistance that a recipient receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101; or

(ii) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in § 200.101.

(2) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (2) of the definition of *Federal financial assistance* in this section, or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(3) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal Government owned, contractor operated facilities (GOCOs).

(4) See also definitions of Federal financial assistance, grant agreement, and cooperative agreement.

Federal award date means the date when the Federal award is signed by the authorized official of the Federal awarding agency.

Federal financial assistance means

(1) Assistance that non-Federal entities receive or administer in the form of:

(i) Grants;

(ii) Cooperative agreements;

(iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;

(v) Food commodities; and

(vi) Other financial assistance (except assistance listed in paragraph (2) of this definition).

(2) For § 200.203 and subpart F of this part, *Federal financial assistance* also includes assistance that non-Federal entities receive or administer in the form of:

(i) Loans;

(ii) Loan Guarantees;

(iii) Interest subsidies; and
(iv) Insurance.
(3) For § 200.216, Federal financial assistance includes assistance that non-Federal entities receive or administer in the form of:
(i) Grants;
(ii) Cooperative agreements;
(iii) Loans; and
(iv) Loan Guarantees.
(4) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in § 200.502(h) and (i).

Federal interest means, for purposes of § 200.330 or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the:
(1) The percentage of Federal participation in the total cost of the real property, equipment, or supplies; and
(2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

Federal program means:
(1) All Federal awards which are assigned a single Assistance Listings Number.
(2) When no Assistance Listings Number is assigned, all Federal awards from the same agency made for the same purpose must be combined and considered one program.
(3) Notwithstanding paragraphs (1) and (2) of this definition, a cluster of programs. The types of clusters of programs are:
(i) Research and development (R&D);
(ii) Student financial aid (SFA); and
(iii) ''Other clusters,'' as described in the definition of *cluster of programs* in this section.

Federal share means the portion of the Federal award costs that are paid using Federal funds.

Final cost objective means a cost objective which has allocated to it both direct and indirect costs and, in the non-Federal entity's accumulation system, is one of the final accumulation points, such as a particular award, internal project, or other direct activity of a non-Federal entity. See also the definitions of *cost objective* and *intermediate cost objective* in this section.

Financial obligations, when referencing a recipient's or subrecipient's use of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions that require payment.

Fixed amount awards means a type of grant or cooperative agreement under which the Federal awarding agency or pass-through entity provides a specific level of support without regard to actual costs incurred under the Federal award. This type of Federal award reduces some of the administrative burden and record-keeping requirements for both the non-Federal entity and Federal awarding agency or pass-through entity. Accountability is based primarily on performance and results. See §§ 200.102(c), 200.201(b), and 200.333.

Foreign organization means an entity that is:
(1) A public or private organization located in a country other than the United States and its territories that is subject to the laws of the country in which it is located, irrespective of the citizenship of project staff or place of performance;
(2) A private nongovernmental organization located in a country other than the United States that solicits and receives cash contributions from the general public;
(3) A charitable organization located in a country other than the United States that is nonprofit and tax exempt under the laws of its country of domicile and operation, and is not a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, synagogue, mosque or other similar entities organized primarily for religious purposes; or
(4) An organization located in a country other than the United States not recognized as a foreign public entity.

Foreign public entity means:
(1) A foreign government or foreign governmental entity;
(2) A public international organization, which is an organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (22 U.S.C. 288–288f);
(3) An entity owned (in whole or in part) or controlled by a foreign government; or
(4) Any other entity consisting wholly or partially of one or more foreign governments or foreign governmental entities.

General purpose equipment means equipment which is not limited to research, medical, scientific or other technical activities. Examples include office equipment and furnishings, modular offices, telephone networks, information technology equipment and systems, air conditioning equipment, reproduction and printing equipment, and motor vehicles. See also the definitions of *equipment* and *special purpose equipment* in this section.

Generally accepted accounting principles (GAAP) has the meaning specified in accounting standards issued by the GASB and the FASB.

Generally accepted government auditing standards (GAGAS), also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

Grant agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:
(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency or pass-through entity's direct benefit or use;
(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement of the Federal awarding agency in carrying out the activity contemplated by the Federal award.
(3) Does not include an agreement that provides only:
(i) Direct United States Government cash assistance to an individual;
(ii) A subsidy;
(iii) A loan;
(vi) A loan guarantee; or
(v) Insurance.

Highest level owner means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest-level owner as defined in the Federal Acquisition Regulations (FAR) (48 CFR 52.204–17).

Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.

Improper payment means:
(1) Any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other *legally applicable* requirements.
(i) Incorrect amounts are overpayments or underpayments that are made to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are

for an incorrect amount, and duplicate payments). An improper payment also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).

Note 1 to paragraph (1)(i) of this definition. Applicable discounts are only those discounts where it is both advantageous and within the agency's control to claim them.

(ii) When an agency's review is unable to discern whether a payment was proper as a result of insufficient or lack of documentation, this payment should also be considered an improper payment. When establishing documentation requirements for payments, agencies should ensure that all documentation requirements are necessary and should refrain from imposing additional burdensome documentation requirements.

(iii) Interest or other fees that may result from an underpayment by an agency are not considered an improper payment if the interest was paid correctly. These payments are generally separate transactions and may be necessary under certain statutory, contractual, administrative, or other legally applicable requirements.

(iv) A ''questioned cost'' (as defined in this section) should not be considered an improper payment until the transaction has been completely reviewed and is confirmed to be improper.

(v) The term ''payment'' in this definition means any disbursement or transfer of Federal funds (including a commitment for future payment, such as cash, securities, loans, loan guarantees, and insurance subsidies) to any non-Federal person, non-Federal entity, or Federal employee, that is made by a Federal agency, a Federal contractor, a Federal grantee, or a governmental or other organization administering a Federal program or activity.

(vi) The term ''payment'' includes disbursements made pursuant to prime contracts awarded under the Federal Acquisition Regulation and Federal awards subject to this part that are expended by recipients.

(2) See definition of improper payment in OMB Circular A–123 appendix C, part I A (1) ''What is an improper payment?'' Questioned costs, including those identified in audits, are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A–123 appendix C.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. Chapter 33), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U.S.C. 450b(e)). See annually published Bureau of Indian Affairs list of Indian Entities Recognized and Eligible to Receive Services.

Institutions of Higher Education (IHEs) is defined at 20 U.S.C. 1001.

Indirect (facilities & administrative (F&A)) costs means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect (F&A) costs. Indirect (F&A) cost pools must be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

Indirect cost rate proposal means the documentation prepared by a non-Federal entity to substantiate its request for the establishment of an indirect cost rate as described in appendices III through VII and appendix IX to this part.

Information technology systems means computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources. See also the definitions of *computing devices* and *equipment* in this section.

Intangible property means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

Intermediate cost objective means a cost objective that is used to accumulate indirect costs or service center costs that are subsequently allocated to one or more indirect cost pools or final cost objectives. See also the definitions of *cost objective* and *final cost objective* in this section.

Internal controls for non-Federal entities means:

(1) Processes designed and implemented by non-Federal entities to provide reasonable assurance regarding the achievement of objectives in the following categories:

(i) Effectiveness and efficiency of operations;

(ii) Reliability of reporting for internal and external use; and

(iii) Compliance with applicable laws and regulations.

(2) Federal awarding agencies are required to follow internal control compliance requirements in OMB Circular No. A–123, Management's Responsibility for Enterprise Risk Management and Internal Control.

Loan means a Federal loan or loan guarantee received or administered by a non-Federal entity, except as used in the definition of *program income* in this section.

(1) The term ''direct loan'' means a disbursement of funds by the Federal Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Federal Government asset on credit terms. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(2) The term ''direct loan obligation'' means a binding agreement by a Federal awarding agency to make a direct loan when specified conditions are fulfilled by the borrower.

(3) The term ''loan guarantee'' means any Federal Government guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

(4) The term ''loan guarantee commitment'' means a binding agreement by a Federal awarding agency to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

Local government means any unit of government within a state, including a:

(1) County;

(2) Borough;

(3) Municipality;

(4) City;

(5) Town;

(6) Township;

(7) Parish;

(8) Local public authority, including any public housing agency under the United States Housing Act of 1937;

(9) Special district;
(10) School district;
(11) Intrastate district;
(12) Council of governments, whether or not incorporated as a nonprofit corporation under State law; and
(13) Any other agency or instrumentality of a multi-, regional, or intra-State or local government.

Major program means a Federal program determined by the auditor to be a major program in accordance with § 200.518 or a program identified as a major program by a Federal awarding agency or pass-through entity in accordance with § 200.503(e).

Management decision means the Federal awarding agency's or pass-through entity's written determination, provided to the auditee, of the adequacy of the auditee's proposed corrective actions to address the findings, based on its evaluation of the audit findings and proposed corrective actions.

Micro-purchase means a purchase of supplies or services, the aggregate amount of which does not exceed the micro-purchase threshold. Micro-purchases comprise a subset of a non-Federal entity's small purchases as defined in § 200.320.

Micro-purchase threshold means the dollar amount at or below which a non-Federal entity may purchase property or services using micro-purchase procedures (see § 200.320). Generally, the micro-purchase threshold for procurement activities administered under Federal awards is not to exceed the amount set by the FAR at 48 CFR part 2, subpart 2.1, unless a higher threshold is requested by the non-Federal entity and approved by the cognizant agency for indirect costs.

Modified Total Direct Cost (MTDC) means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of $25,000. Other items may only be excluded when necessary to avoid a serious inequity in the distribution of indirect costs, and with the approval of the cognizant agency for indirect costs.

Non-discretionary award means an award made by the Federal awarding agency to specific recipients in accordance with statutory, eligibility and compliance requirements, such that in keeping with specific statutory authority the agency has no ability to exercise judgement (''discretion''). A non-discretionary award amount could be determined specifically or by formula.

Non-Federal entity (NFE) means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Nonprofit organization means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
(2) Is not organized primarily for profit; and
(3) Uses net proceeds to maintain, improve, or expand the operations of the organization.

Notice of funding opportunity means a formal announcement of the availability of Federal funding through a financial assistance program from a Federal awarding agency. The notice of funding opportunity provides information on the award, who is eligible to apply, the evaluation criteria for selection of an awardee, required components of an application, and how to submit the application. The notice of funding opportunity is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a ''program announcement,'' ''notice of funding availability,'' ''broad agency announcement,'' ''research announcement,'' ''solicitation,'' or some other term.

Office of Management and Budget (OMB) means the Executive Office of the President, Office of Management and Budget.

Oversight agency for audit means the Federal awarding agency that provides the predominant amount of funding directly (direct funding) (as listed on the schedule of expenditures of Federal awards, see § 200.510(b)) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total Federal expenditures (as direct and sub-awards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit. When there is no direct funding, the Federal awarding agency which is the predominant source of pass-through funding must assume the oversight responsibilities. The duties of the oversight agency for audit and the process for any reassignments are described in § 200.513(b).

Participant support costs means direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences, or training projects.

Pass-through entity (PTE) means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Performance goal means a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared, including a goal expressed as a quantitative standard, value, or rate. In some instances (*e.g.,* discretionary research awards), this may be limited to the requirement to submit technical performance reports (to be evaluated in accordance with agency policy).

Period of performance means the total estimated time interval between the start of an initial Federal award and the planned end date, which may include one or more funded portions, or budget periods. Identification of the period of performance in the Federal award per § 200.211(b)(5) does not commit the awarding agency to fund the award beyond the currently approved budget period.

Personal property means property other than real property. It may be tangible, having physical existence, or intangible.

Personally Identifiable Information (PII) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. Some information that is considered to be PII is available in public sources such as telephone books, public websites, and university listings. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, email address, home telephone number, and general educational credentials. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. Non-PII can become PII whenever additional information is made publicly available, in any medium and from any source, that, when combined with other available information, could be used to identify an individual.

Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of

performance except as provided in § 200.307(f). (See the definition of *period of performance* in this section.) Program income includes but is not limited to income from fees for services performed, the use or rental or real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See also § 200.407. See also 35 U.S.C. 200–212 ''Disposition of Rights in Educational Awards'' applies to inventions made under Federal awards.

Project cost means total allowable costs incurred under a Federal award and all required cost sharing and voluntary committed cost sharing, including third-party contributions.

Property means real property or personal property. See also the definitions of *real property* and *personal property* in this section.

Protected Personally Identifiable Information (Protected PII) means an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include PII that is required by law to be disclosed. See also the definition of *Personally Identifiable Information (PII)* in this section.

Questioned cost means a cost that is questioned by the auditor because of an audit finding:

(1) Which resulted from a violation or possible violation of a statute, regulation, or the terms and conditions of a Federal award, including for funds used to match Federal funds;

(2) Where the costs, at the time of the audit, are not supported by adequate documentation; or

(3) Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

(4) Questioned costs are not an improper payment until reviewed and confirmed to be improper as defined in OMB Circular A–123 appendix C. (See also the definition of *Improper payment* in this section).

Real property means land, including land improvements, structures and appurtenances thereto, but excludes moveable machinery and equipment.

Recipient means an entity, usually but not limited to non-Federal entities that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.

Renewal award means an award made subsequent to an expiring Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. A renewal award's start date will begin a distinct period of performance.

Research and Development (R&D) means all research activities, both basic and applied, and all development activities that are performed by non-Federal entities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function. ''Research'' is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Simplified acquisition threshold means the dollar amount below which a non-Federal entity may purchase property or services using small purchase methods (see § 200.320). Non-Federal entities adopt small purchase procedures in order to expedite the purchase of items at or below the simplified acquisition threshold. The simplified acquisition threshold for procurement activities administered under Federal awards is set by the FAR at 48 CFR part 2, subpart 2.1. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. However, in no circumstances can this threshold exceed the dollar value established in the FAR (48 CFR part 2, subpart 2.1) for the simplified acquisition threshold. Recipients should determine if local government laws on purchasing apply.

Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers. See also the definitions of *equipment* and *general purpose equipment* in this section.

State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

Student Financial Aid (SFA) means Federal awards under those programs of general student assistance, such as those authorized by Title IV of the Higher Education Act of 1965, as amended, (20 U.S.C. 1070–1099d), which are administered by the U.S. Department of Education, and similar programs provided by other Federal agencies. It does not include Federal awards under programs that provide fellowships or similar Federal awards to students on a competitive basis, or for specified studies or research.

Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

Subsidiary means an entity in which more than 50 percent of the entity is owned or controlled directly by a parent corporation or through another subsidiary of a parent corporation.

Supplies means all tangible personal property other than those described in the definition of *equipment* in this section. A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or $5,000, regardless of the length of its useful life. See also the definitions of *computing devices* and *equipment* in this section.

Telecommunications cost means the cost of using communication and telephony technologies such as mobile phones, land lines, and internet.

Termination means the ending of a Federal award, in whole or in part at any time prior to the planned end of period of performance. A lack of available funds is not a termination.

Third-party in-kind contributions means the value of non-cash contributions (*i.e.,* property or services) that—

(1) Benefit a federally-assisted project or program; and

(2) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

Unliquidated financial obligations means, for financial reports prepared on a cash basis, financial obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are financial obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

Unobligated balance means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated financial obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

Voluntary committed cost sharing means cost sharing specifically pledged on a voluntary basis in the proposal's budget on the part of the non-Federal entity and that becomes a binding requirement of Federal award. See also § 200.306.

■ 35. Amend § 200.100 by revising paragraphs (a)(1), (c), (d), and (e) to read as follows:

§ 200.100 Purpose.

(a) *Purpose.* (1) This part establishes uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities, as described in § 200.101. Federal awarding agencies must not impose additional or inconsistent requirements, except as provided in §§ 200.102 and 200.211, or unless specifically required by Federal statute, regulation, or Executive order.

* * * * *

(c) *Cost principles.* Subpart E of this part establishes principles for determining the allowable costs incurred by non-Federal entities under Federal awards. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal Government participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by statute.

(d) *Single Audit Requirements and Audit Follow-up.* Subpart F of this part is issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507). It sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards. These provisions also provide the policies and procedures for Federal awarding agencies and pass-through entities when using the results of these audits.

(e) *Guidance on challenges and prizes.* For OMB guidance to Federal awarding agencies on challenges and prizes, please see memo M–10–11 Guidance on the Use of Challenges and Prizes to Promote Open Government, issued March 8, 2010, or its successor.

■ 36. Revise § 200.101 to read as follows:

§ 200.101 Applicability.

(a) *General applicability to Federal agencies.* (1) The requirements established in this part apply to Federal agencies that make Federal awards to non-Federal entities. These requirements are applicable to all costs related to Federal awards.

(2) Federal awarding agencies may apply subparts A through E of this part to Federal agencies, for-profit entities, foreign public entities, or foreign organizations, except where the Federal awarding agency determines that the application of these subparts would be inconsistent with the international responsibilities of the United States or the statutes or regulations of a foreign government.

(b) *Applicability to different types of Federal awards.* (1) Throughout this part when the word ''must'' is used it indicates a requirement. Whereas, use of the word ''should'' or ''may'' indicates a best practice or recommended approach rather than a requirement and permits discretion.

(2) The following table describes what portions of this part apply to which types of Federal awards. The terms and conditions of Federal awards (including this part) flow down to subawards to subrecipients unless a particular section of this part or the terms and conditions of the Federal award specifically indicate otherwise. This means that non-Federal entities must comply with requirements in this part regardless of whether the non-Federal entity is a recipient or subrecipient of a Federal award. Pass-through entities must comply with the requirements described in subpart D of this part, §§ 200.331 through 200.333, but not any requirements in this part directed towards Federal awarding agencies unless the requirements of this part or the terms and conditions of the Federal award indicate otherwise.

TABLE 1 TO PARAGRAPH (b)

The following portions of this Part	Are applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts (except as noted in paragraphs (d) and (e) of this section):	Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:
Subpart A—Acronyms and Definitions	—All.	
Subpart B—General Provisions, except for §§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures.	—All.	
§§ 200.111 English Language, 200.112 Conflict of Interest, 200.113 Mandatory Disclosures.	—Grant Agreements and cooperative agreements.	—Agreements for loans, loan guarantees, interest subsidies and insurance. —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.

TABLE 1 TO PARAGRAPH (b)—Continued

The following portions of this Part	Are applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts (except as noted in paragraphs (d) and (e) of this section):	Are NOT applicable to the following types of Federal Awards and Fixed-Price Contracts and Subcontracts:
Subparts C–D, except for §§ 200.203 Requirement to provide public notice of Federal financial assistance programs, 200.303 Internal controls, 200.331–333 Subrecipient Monitoring and Management.	—Grant Agreements and cooperative agreements.	—Agreements for loans, loan guarantees, interest subsidies and insurance. —Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
§ 200.203 Requirement to provide public notice of Federal financial assistance programs.	—Grant Agreements and cooperative agreements. —Agreements for loans, loan guarantees, interest subsidies and insurance.	—Procurement contracts awarded by Federal Agencies under the Federal Acquisition Regulation and subcontracts under those contracts.
§§ 200.303 Internal controls, 200.331–333 Subrecipient Monitoring and Management.	—All.	
Subpart E—Cost Principles	—Grant Agreements and cooperative agreements, except those providing food commodities. —All procurement contracts under the Federal Acquisition Regulations except those that are not negotiated.	—Grant agreements and cooperative agreements providing foods commodities. —Fixed amount awards. —Agreements for loans, loans guarantees, interest subsidies and insurance. —Federal awards to hospitals (see Appendix IX Hospital Cost Principles).
Subpart F—Audit Requirements	—Grant Agreements and cooperative agreements. —Contracts and subcontracts, except for fixed price contacts and subcontracts, awarded under the Federal Acquisition Regulation. —Agreements for loans, loans guarantees, interest subsidies and insurance and other forms of Federal Financial Assistance as defined by the Single Audit Act Amendment of 1996.	—Fixed-price contracts and subcontracts awarded under the Federal Acquisition Regulation.

(c) *Federal award of cost-reimbursement contract under the FAR to a non-Federal entity.* When a non-Federal entity is awarded a cost-reimbursement contract, only subpart D, §§ 200.331 through 200.333, and subparts E and F of this part are incorporated by reference into the contract, but the requirements of subparts D, E, and F are supplementary to the FAR and the contract. When the Cost Accounting Standards (CAS) are applicable to the contract, they take precedence over the requirements of this part, including subpart F of this part, which are supplementary to the CAS requirements. In addition, costs that are made unallowable under 10 U.S.C. 2324(e) and 41 U.S.C. 4304(a) as described in the FAR 48 CFR part 31, subpart 31.2, and 48 CFR 31.603 are always unallowable. For requirements other than those covered in subpart D, §§ 200.331 through 200.333, and subparts E and F of this part, the terms of the contract and the FAR apply. Note that when a non-Federal entity is awarded a FAR contract, the FAR applies, and the terms and conditions of the contract shall prevail over the requirements of this part.

(d) *Governing provisions.* With the exception of subpart F of this part, which is required by the Single Audit Act, in any circumstances where the provisions of Federal statutes or regulations differ from the provisions of this part, the provision of the Federal statutes or regulations govern. This includes, for agreements with Indian tribes, the provisions of the Indian Self-Determination and Education and Assistance Act (ISDEAA), as amended, 25 U.S.C 450–458ddd–2.

(e) *Program applicability.* Except for §§ 200.203 and 200.331 through 200.333, the requirements in subparts C, D, and E of this part do not apply to the following programs:

(1) The block grant awards authorized by the Omnibus Budget Reconciliation Act of 1981 (including Community Services), except to the extent that subpart E of this part apply to subrecipients of Community Services Block Grant funds pursuant to 42 U.S.C. 9916(a)(1)(B);

(2) Federal awards to local education agencies under 20 U.S.C. 7702–7703b, (portions of the Impact Aid program);

(3) Payments under the Department of Veterans Affairs' State Home Per Diem Program (38 U.S.C. 1741); and

(4) Federal awards authorized under the Child Care and Development Block Grant Act of 1990, as amended:

(i) Child Care and Development Block Grant (42 U.S.C. 9858).

(ii) Child Care Mandatory and Matching Funds of the Child Care and Development Fund (42 U.S.C. 9858).

(f) *Additional program applicability.* Except for § 200.203, the guidance in subpart C of this part does not apply to the following programs:

(1) Entitlement Federal awards to carry out the following programs of the Social Security Act:

(i) Temporary Assistance for Needy Families (title IV–A of the Social Security Act, 42 U.S.C. 601–619);

(ii) Child Support Enforcement and Establishment of Paternity (title IV–D of the Social Security Act, 42 U.S.C. 651–669b);

(iii) Foster Care and Adoption Assistance (title IV–E of the Act, 42 U.S.C. 670–679c);

(iv) Aid to the Aged, Blind, and Disabled (titles I, X, XIV, and XVI–AABD of the Act, as amended);

(v) Medical Assistance (Medicaid) (title XIX of the Act, 42 U.S.C. 1396–1396w–5) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B) of the Social Security Act (42 U.S.C. 1396b(a)(6)(B)); and

(vi) Children's Health Insurance Program (title XXI of the Act, 42 U.S.C. 1397aa–1397mm).

(2) A Federal award for an experimental, pilot, or demonstration project that is also supported by a Federal award listed in paragraph (f)(1) of this section.

(3) Federal awards under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits (8 U.S.C. 1522(e)).

(4) Entitlement awards under the following programs of The National School Lunch Act:

(i) National School Lunch Program (section 4 of the Act, 42 U.S.C. 1753);

(ii) Commodity Assistance (section 6 of the Act, 42 U.S.C. 1755);

(iii) Special Meal Assistance (section 11 of the Act, 42 U.S.C. 1759a);

(iv) Summer Food Service Program for Children (section 13 of the Act, 42 U.S.C. 1761); and

(v) Child and Adult Care Food Program (section 17 of the Act, 42 U.S.C. 1766).

(5) Entitlement awards under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk Program (section 3 of the Act, 42 U.S.C. 1772);

(ii) School Breakfast Program (section 4 of the Act, 42 U.S.C. 1773); and

(iii) State Administrative Expenses (section 7 of the Act, 42 U.S.C. 1776).

(6) Entitlement awards for State Administrative Expenses under The Food and Nutrition Act of 2008 (section 16 of the Act, 7 U.S.C. 2025).

(7) Non-discretionary Federal awards under the following non-entitlement programs:

(i) Special Supplemental Nutrition Program for Women, Infants and Children (section 17 of the Child Nutrition Act of 1966) 42 U.S.C. 1786;

(ii) The Emergency Food Assistance Programs (Emergency Food Assistance Act of 1983) 7 U.S.C. 7501 note; and

(iii) Commodity Supplemental Food Program (section 5 of the Agriculture and Consumer Protection Act of 1973) 7 U.S.C. 612c note.

■ 37. Revise § 200.102 to read as follows:

§ 200.102 Exceptions.

(a) With the exception of subpart F of this part, OMB may allow exceptions for classes of Federal awards or non-Federal entities subject to the requirements of this part when exceptions are not prohibited by statute. In the interest of maximum uniformity, exceptions from the requirements of this part will be permitted as described in this section.

(b) Exceptions on a case-by-case basis for individual non-Federal entities may be authorized by the Federal awarding agency or cognizant agency for indirect costs, except where otherwise required by law or where OMB or other approval is expressly required by this part.

(c) The Federal awarding agency may apply adjust requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when required by Federal statutes or regulations, except for the requirements in subpart F of this part. A Federal awarding agency may apply less restrictive requirements when making fixed amount awards as defined in subpart A of this part, except for those requirements imposed by statute or in subpart F of this part.

(d) Federal awarding agencies may request exceptions in support of innovative program designs that apply a risk-based, data-driven framework to alleviate select compliance requirements and hold recipients accountable for good performance. See also § 200.206.

■ 38. Revise § 200.103 to read as follows:

§ 200.103 Authorities.

This part is issued under the following authorities.

(a) Subparts B through D of this part are authorized under 31 U.S.C. 503 (the Chief Financial Officers Act, Functions of the Deputy Director for Management), 41 U.S.C. 1101–1131 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and Executive Order 11541 (''Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President''), the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507), as well as The Federal Program Information Act (Pub. L. 95–220 and Pub. L. 98–169, as amended, codified at 31 U.S.C. 6101–6106).

(b) Subpart E of this part is authorized under the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended (31 U.S.C. 1101–1125); the Chief Financial Officers Act of 1990 (31 U.S.C. 503–504); Reorganization Plan No. 2 of 1970; and Executive Order 11541, ''Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President.''

(c) Subpart F of this part is authorized under the Single Audit Act Amendments of 1996, (31 U.S.C. 7501–7507).

■ 39. Amend § 200.104 by revising the introductory text and paragraphs (g) and (h) to read as follows:

§ 200.104 Supersession.

As described in § 200.110, this part supersedes the following OMB guidance documents and regulations under title 2 of the Code of Federal Regulations:

* * * * *

(g) A–133, ''Audits of States, Local Governments and Non-Profit Organizations''; and

(h) Those sections of A–50 related to audits performed under subpart F of this part.

■ 40. Revise § 200.105 to read as follows:

§ 200.105 Effect on other issuances.

(a) *Superseding inconsistent requirements.* For Federal awards subject to this part, all administrative requirements, program manuals, handbooks and other non-regulatory materials that are inconsistent with the requirements of this part must be superseded upon implementation of this part by the Federal agency, except to the extent they are required by statute or authorized in accordance with the provisions in § 200.102.

(b) *Imposition of requirements on recipients.* Agencies may impose legally binding requirements on recipients only through the notice and public comment process through an approved agency process, including as authorized by this part, other statutes or regulations, or as incorporated into the terms of a Federal award.

■ 41. Revise § 200.106 to read as follows:

§ 200.106 Agency implementation.

The specific requirements and responsibilities of Federal agencies and non-Federal entities are set forth in this part. Federal agencies making Federal awards to non-Federal entities must implement the language in subparts C through F of this part in codified regulations unless different provisions are required by Federal statute or are approved by OMB.

■ 42. Revise § 200.110 to read as follows:

§ 200.110 Effective/applicability date.

(a) The standards set forth in this part that affect the administration of Federal awards issued by Federal awarding agencies become effective once implemented by Federal awarding

agencies or when any future amendment to this part becomes final.

(b) Existing negotiated indirect cost rates (as of the publication date of the revisions to the guidance) will remain in place until they expire. The effective date of changes to indirect cost rates must be based upon the date that a newly re-negotiated rate goes into effect for a specific non-Federal entity's fiscal year. Therefore, for indirect cost rates and cost allocation plans, the revised Uniform Guidance (as of the publication date for revisions to the guidance) become effective in generating proposals and negotiating a new rate (when the rate is re-negotiated).

■ 43. Revise § 200.113 to read as follows:

§ 200.113 Mandatory disclosures.

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII to this part are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

■ 44. Revise subpart C to read as follows:

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

Sec.

200.200 Purpose.
200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.
200.202 Program planning and design.
200.203 Requirement to provide public notice of Federal financial assistance programs.
200.204 Notices of funding opportunities.
200.205 Federal awarding agency review of merit of proposals.
200.206 Federal awarding agency review of risk posed by applicants.
200.207 Standard application requirements.
200.208 Specific conditions.
200.209 Certifications and representations.
200.210 Pre-award costs.
200.211 Information contained in a Federal award.
200.212 Public access to Federal award information.
200.213 Reporting a determination that a non-Federal entity is not qualified for a Federal award.
200.214 Suspension and debarment.
200.215 Never contract with the enemy.
200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

Subpart C—Pre-Federal Award Requirements and Contents of Federal Awards

§ 200.200 Purpose.

Sections 200.201 through 200.216 prescribe instructions and other pre-award matters to be used by Federal awarding agencies in the program planning, announcement, application and award processes.

§ 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(a) *Federal award instrument.* The Federal awarding agency or pass-through entity must decide on the appropriate instrument for the Federal award (*i.e.,* grant agreement, cooperative agreement, or contract) in accordance with the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08).

(b) *Fixed amount awards.* In addition to the options described in paragraph (a) of this section, Federal awarding agencies, or pass-through entities as permitted in § 200.333, may use fixed amount awards (see *Fixed amount awards* in § 200.1) to which the following conditions apply:

(1) The Federal award amount is negotiated using the cost principles (or other pricing information) as a guide. The Federal awarding agency or pass-through entity may use fixed amount awards if the project scope has measurable goals and objectives and if adequate cost, historical, or unit pricing data is available to establish a fixed amount award based on a reasonable estimate of actual cost. Payments are based on meeting specific requirements of the Federal award. Accountability is based on performance and results. Except in the case of termination before completion of the Federal award, there is no governmental review of the actual costs incurred by the non-Federal entity in performance of the award. Some of the ways in which the Federal award may be paid include, but are not limited to:

(i) In several partial payments, the amount of each agreed upon in advance, and the ''milestone'' or event triggering the payment also agreed upon in advance, and set forth in the Federal award;

(ii) On a unit price basis, for a defined unit or units, at a defined price or prices, agreed to in advance of performance of the Federal award and set forth in the Federal award; or,

(iii) In one payment at Federal award completion.

(2) A fixed amount award cannot be used in programs which require mandatory cost sharing or match.

(3) The non-Federal entity must certify in writing to the Federal awarding agency or pass-through entity at the end of the Federal award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Federal award must be adjusted.

(4) Periodic reports may be established for each Federal award.

(5) Changes in principal investigator, project leader, project partner, or scope of effort must receive the prior written approval of the Federal awarding agency or pass-through entity.

§ 200.202 Program planning and design.

The Federal awarding agency must design a program and create an Assistance Listing before announcing the Notice of Funding Opportunity. The program must be designed with clear goals and objectives that facilitate the delivery of meaningful results consistent with the Federal authorizing legislation of the program. Program performance shall be measured based on the goals and objectives developed during program planning and design. See § 200.301 for more information on performance measurement. Performance measures may differ depending on the type of program. The program must align with the strategic goals and objectives within the Federal awarding agency's performance plan and should support the Federal awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A–11 (Preparation, Submission, and Execution of the Budget). The program must also be designed to align with the Program Management Improvement Accountability Act (Pub. L. 114–264).

§ 200.203 Requirement to provide public notice of Federal financial assistance programs.

(a) The Federal awarding agency must notify the public of Federal programs in the Federal Assistance Listings maintained by the General Services Administration (GSA).

(1) The Federal Assistance Listings is the single, authoritative, governmentwide comprehensive source of Federal financial assistance program information produced by the executive branch of the Federal Government.

(2) The information that the Federal awarding agency must submit to GSA for approval by OMB is listed in

paragraph (b) of this section. GSA must prescribe the format for the submission in coordination with OMB.

(3) The Federal awarding agency may not award Federal financial assistance without assigning it to a program that has been included in the Federal Assistance Listings as required in this section unless there are exigent circumstances requiring otherwise, such as timing requirements imposed by statute.

(b) For each program that awards discretionary Federal awards, non-discretionary Federal awards, loans, insurance, or any other type of Federal financial assistance, the Federal awarding agency must, to the extent practicable, create, update, and manage Assistance Listings entries based on the authorizing statute for the program and comply with additional guidance provided by GSA in consultation with OMB to ensure consistent, accurate information is available to prospective applicants. Accordingly, Federal awarding agencies must submit the following information to GSA:

(1) *Program Description, Purpose, Goals, and Measurement.* A brief summary of the statutory or regulatory requirements of the program and its intended outcome. Where appropriate, the Program Description, Purpose, Goals, and Measurement should align with the strategic goals and objectives within the Federal awarding agency's performance plan and should support the Federal awarding agency's performance measurement, management, and reporting as required by Part 6 of OMB Circular A–11;

(2) *Identification.* Identification of whether the program makes Federal awards on a discretionary basis or the Federal awards are prescribed by Federal statute, such as in the case of formula grants.

(3) *Projected total amount of funds available for the program.* Estimates based on previous year funding are acceptable if current appropriations are not available at the time of the submission;

(4) *Anticipated source of available funds.* The statutory authority for funding the program and, to the extent possible, agency, sub-agency, or, if known, the specific program unit that will issue the Federal awards, and associated funding identifier (*e.g.,* Treasury Account Symbol(s));

(5) *General eligibility requirements.* The statutory, regulatory or other eligibility factors or considerations that determine the applicant's qualification for Federal awards under the program (*e.g.,* type of non-Federal entity); and

(6) *Applicability of Single Audit Requirements.* Applicability of Single Audit Requirements as required by subpart F of this part.

§ 200.204 Notices of funding opportunities.

For discretionary grants and cooperative agreements that are competed, the Federal awarding agency must announce specific funding opportunities by providing the following information in a public notice:

(a) *Summary information in notices of funding opportunities.* The Federal awarding agency must display the following information posted on the OMB-designated governmentwide website for funding and applying for Federal financial assistance, in a location preceding the full text of the announcement:

(1) Federal Awarding Agency Name;

(2) Funding Opportunity Title;

(3) Announcement Type (whether the funding opportunity is the initial announcement of this funding opportunity or a modification of a previously announced opportunity);

(4) Funding Opportunity Number (required, if applicable). If the Federal awarding agency has assigned or will assign a number to the funding opportunity announcement, this number must be provided;

(5) Assistance Listings Number(s);

(6) Key Dates. Key dates include due dates for applications or Executive Order 12372 submissions, as well as for any letters of intent or pre-applications. For any announcement issued before a program's application materials are available, key dates also include the date on which those materials will be released; and any other additional information, as deemed applicable by the relevant Federal awarding agency.

(b) *Availability period.* The Federal awarding agency must generally make all funding opportunities available for application for at least 60 calendar days. The Federal awarding agency may make a determination to have a less than 60 calendar day availability period but no funding opportunity should be available for less than 30 calendar days unless exigent circumstances require as determined by the Federal awarding agency head or delegate.

(c) *Full text of funding opportunities.* The Federal awarding agency must include the following information in the full text of each funding opportunity. For specific instructions on the content required in this section, refer to appendix I to this part.

(1) Full programmatic description of the funding opportunity.

(2) Federal award information, including sufficient information to help an applicant make an informed decision about whether to submit an application. (See also § 200.414(c)(4)).

(3) Specific eligibility information, including any factors or priorities that affect an applicant's or its application's eligibility for selection.

(4) Application Preparation and Submission Information, including the applicable submission dates and time.

(5) Application Review Information including the criteria and process to be used to evaluate applications. See also §§ 200.205 and 200.206.

(6) Federal Award Administration Information. See also § 200.211.

(7) Applicable terms and conditions for resulting awards, including any exceptions from these standard terms.

§ 200.205 Federal awarding agency review of merit of proposals.

For discretionary Federal awards, unless prohibited by Federal statute, the Federal awarding agency must design and execute a merit review process for applications, with the objective of selecting recipients most likely to be successful in delivering results based on the program objectives outlined in section § 200.202. A merit review is an objective process of evaluating Federal award applications in accordance with written standards set forth by the Federal awarding agency. This process must be described or incorporated by reference in the applicable funding opportunity (see appendix I to this part.). See also § 200.204. The Federal awarding agency must also periodically review its merit review process.

§ 200.206 Federal awarding agency review of risk posed by applicants.

(a) *Review of OMB-designated repositories of governmentwide data.* (1) Prior to making a Federal award, the Federal awarding agency is required by the Improper Payments Elimination and Recovery Improvement Act of 2012, 31 U.S.C. 3321 note, and 41 U.S.C. 2313 to review information available through any OMB-designated repositories of governmentwide eligibility qualification or financial integrity information as appropriate. See also suspension and debarment requirements at 2 CFR part 180 as well as individual Federal agency suspension and debarment regulations in title 2 of the Code of Federal Regulations.

(2) In accordance 41 U.S.C. 2313, the Federal awarding agency is required to review the non-public segment of the OMB-designated integrity and performance system accessible through SAM (currently the Federal Awardee

Performance and Integrity Information System (FAPIIS)) prior to making a Federal award where the Federal share is expected to exceed the simplified acquisition threshold, defined in 41 U.S.C. 134, over the period of performance. As required by Public Law 112–239, National Defense Authorization Act for Fiscal Year 2013, prior to making a Federal award, the Federal awarding agency must consider all of the information available through FAPIIS with regard to the applicant and any immediate highest level owner, predecessor (*i.e.;* a non-Federal entity that is replaced by a successor), or subsidiary, identified for that applicant in FAPIIS, if applicable. At a minimum, the information in the system for a prior Federal award recipient must demonstrate a satisfactory record of executing programs or activities under Federal grants, cooperative agreements, or procurement awards; and integrity and business ethics. The Federal awarding agency may make a Federal award to a recipient who does not fully meet these standards, if it is determined that the information is not relevant to the current Federal award under consideration or there are specific conditions that can appropriately mitigate the effects of the non-Federal entity's risk in accordance with § 200.208.

(b) *Risk evaluation.* (1) The Federal awarding agency must have in place a framework for evaluating the risks posed by applicants before they receive Federal awards. This evaluation may incorporate results of the evaluation of the applicant's eligibility or the quality of its application. If the Federal awarding agency determines that a Federal award will be made, special conditions that correspond to the degree of risk assessed may be applied to the Federal award. Criteria to be evaluated must be described in the announcement of funding opportunity described in § 200.204.

(2) In evaluating risks posed by applicants, the Federal awarding agency may use a risk-based approach and may consider any items such as the following:

(i) *Financial stability.* Financial stability;

(ii) *Management systems and standards.* Quality of management systems and ability to meet the management standards prescribed in this part;

(iii) *History of performance.* The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;

(iv) *Audit reports and findings.* Reports and findings from audits performed under subpart F of this part or the reports and findings of any other available audits; and

(v) *Ability to effectively implement requirements.* The applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on non-Federal entities.

(c) *Risk-based requirements adjustment.* The Federal awarding agency may adjust requirements when a risk-evaluation indicates that it may be merited either pre-award or post-award.

(d) *Suspension and debarment compliance.* (1) The Federal awarding agency must comply with the guidelines on governmentwide suspension and debarment in 2 CFR part 180, and must require non-Federal entities to comply with these provisions. These provisions restrict Federal awards, subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal programs or activities.

§ 200.207 Standard application requirements.

(a) *Paperwork clearances.* The Federal awarding agency may only use application information collections approved by OMB under the Paperwork Reduction Act of 1995 and OMB's implementing regulations in 5 CFR part 1320 and in alignment with OMB-approved, governmentwide data elements available from the OMB-designated standards lead. Consistent with these requirements, OMB will authorize additional information collections only on a limited basis.

(b) *Information collection.* If applicable, the Federal awarding agency may inform applicants and recipients that they do not need to provide certain information otherwise required by the relevant information collection.

§ 200.208 Specific conditions.

(a) Federal awarding agencies are responsible for ensuring that specific Federal award conditions are consistent with the program design reflected in § 200.202 and include clear performance expectations of recipients as required in § 200.301.

(b) The Federal awarding agency or pass-through entity may adjust specific Federal award conditions as needed, in accordance with this section, based on an analysis of the following factors:

(1) Based on the criteria set forth in § 200.206;

(2) The applicant or recipient's history of compliance with the general or specific terms and conditions of a Federal award;

(3) The applicant or recipient's ability to meet expected performance goals as described in § 200.211; or

(4) A responsibility determination of an applicant or recipient.

(c) Additional Federal award conditions may include items such as the following:

(1) Requiring payments as reimbursements rather than advance payments;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given performance period;

(3) Requiring additional, more detailed financial reports;

(4) Requiring additional project monitoring;

(5) Requiring the non-Federal entity to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(d) If the Federal awarding agency or pass-through entity is imposing additional requirements, they must notify the applicant or non-Federal entity as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the action needed to remove the additional requirement, if applicable;

(4) The time allowed for completing the actions if applicable; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(e) Any additional requirements must be promptly removed once the conditions that prompted them have been satisfied.

§ 200.209 Certifications and representations.

Unless prohibited by the U.S. Constitution, Federal statutes or regulations, each Federal awarding agency or pass-through entity is authorized to require the non-Federal entity to submit certifications and representations required by Federal statutes, or regulations on an annual basis. Submission may be required more frequently if the non-Federal entity fails to meet a requirement of a Federal award.

§ 200.210 Pre-award costs.

For requirements on costs incurred by the applicant prior to the start date of the period of performance of the Federal award, see § 200.458.

§ 200.211 Information contained in a Federal award.

A Federal award must include the following information:

(a) *Federal award performance goals.* Performance goals, indicators, targets, and baseline data must be included in the Federal award, where applicable. The Federal awarding agency must also specify how performance will be assessed in the terms and conditions of the Federal award, including the timing and scope of expected performance. See §§ 200.202 and 200.301 for more information on Federal award performance goals.

(b) *General Federal award information.* The Federal awarding agency must include the following general Federal award information in each Federal award:

(1) Recipient name (which must match the name associated with its unique entity identifier as defined at 2 CFR 25.315);

(2) Recipient's unique entity identifier;

(3) Unique Federal Award Identification Number (FAIN);

(4) Federal Award Date (see Federal award date in § 200.201);

(5) Period of Performance Start and End Date;

(6) Budget Period Start and End Date;

(7) Amount of Federal Funds Obligated by this action;

(8) Total Amount of Federal Funds Obligated;

(9) Total Approved Cost Sharing or Matching, where applicable;

(10) Total Amount of the Federal Award including approved Cost Sharing or Matching;

(11) Budget Approved by the Federal Awarding Agency;

(11) Federal award description, (to comply with statutory requirements (*e.g.,* FFATA));

(12) Name of Federal awarding agency and contact information for awarding official,

(13) Assistance Listings Number and Title;

(14) Identification of whether the award is R&D; and

(15) Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414).

(c) *General terms and conditions.* (1) Federal awarding agencies must incorporate the following general terms and conditions either in the Federal award or by reference, as applicable:

(i) *Administrative requirements.* Administrative requirements implemented by the Federal awarding agency as specified in this part.

(ii) *National policy requirements.* These include statutory, executive order, other Presidential directive, or regulatory requirements that apply by specific reference and are not program-specific. See § 200.300 Statutory and national policy requirements.

(iii) *Recipient integrity and performance matters.* If the total Federal share of the Federal award may include more than $500,000 over the period of performance, the Federal awarding agency must include the term and condition available in appendix XII of this part. See also § 200.113.

(iv) *Future budget periods.* If it is anticipated that the period of performance will include multiple budget periods, the Federal awarding agency must indicate that subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.

(v) *Termination provisions.* Federal awarding agencies must make recipients aware, in a clear and unambiguous manner, of the termination provisions in § 200.340, including the applicable termination provisions in the Federal awarding agency's regulations or in each Federal award.

(2) The Federal award must incorporate, by reference, all general terms and conditions of the award, which must be maintained on the agency's website.

(3) If a non-Federal entity requests a copy of the full text of the general terms and conditions, the Federal awarding agency must provide it.

(4) Wherever the general terms and conditions are publicly available, the Federal awarding agency must maintain an archive of previous versions of the general terms and conditions, with effective dates, for use by the non-Federal entity, auditors, or others.

(d) *Federal awarding agency, program, or Federal award specific terms and conditions.* The Federal awarding agency must include with each Federal award any terms and conditions necessary to communicate requirements that are in addition to the requirements outlined in the Federal awarding agency's general terms and conditions. See also § 200.208. Whenever practicable, these specific terms and conditions also should be shared on the agency's website and in notices of funding opportunities (as outlined in § 200.204) in addition to being included in a Federal award. See also § 200.207.

(e) *Federal awarding agency requirements.* Any other information required by the Federal awarding agency.

§ 200.212 Public access to Federal award information.

(a) In accordance with statutory requirements for Federal spending transparency (*e.g.,* FFATA), except as noted in this section, for applicable Federal awards the Federal awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated governmentwide website.

(b) All information posted in the designated integrity and performance system accessible through SAM (currently FAPIIS) on or after April 15, 2011 will be publicly available after a waiting period of 14 calendar days, except for:

(1) Past performance reviews required by Federal Government contractors in accordance with the Federal Acquisition Regulation (FAR) 48 CFR part 42, subpart 42.15;

(2) Information that was entered prior to April 15, 2011; or

(3) Information that is withdrawn during the 14-calendar day waiting period by the Federal Government official.

(c) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C 552), or controlled unclassified information pursuant to Executive Order 13556.

§ 200.213 Reporting a determination that a non-Federal entity is not qualified for a Federal award.

(a) If a Federal awarding agency does not make a Federal award to a non-Federal entity because the official determines that the non-Federal entity does not meet either or both of the minimum qualification standards as described in § 200.206(a)(2), the Federal awarding agency must report that determination to the designated integrity and performance system accessible through SAM (currently FAPIIS), only if all of the following apply:

(1) The only basis for the determination described in this paragraph (a) is the non-Federal entity's prior record of executing programs or activities under Federal awards or its record of integrity and business ethics, as described in § 200.206(a)(2) (*i.e.,* the entity was determined to be qualified based on all factors other than those two standards); and

(2) The total Federal share of the Federal award that otherwise would be made to the non-Federal entity is expected to exceed the simplified

acquisition threshold over the period of performance.

(b) The Federal awarding agency is not required to report a determination that a non-Federal entity is not qualified for a Federal award if they make the Federal award to the non-Federal entity and include specific award terms and conditions, as described in § 200.208.

(c) If a Federal awarding agency reports a determination that a non-Federal entity is not qualified for a Federal award, as described in paragraph (a) of this section, the Federal awarding agency also must notify the non-Federal entity that—

(1) The determination was made and reported to the designated integrity and performance system accessible through SAM, and include with the notification an explanation of the basis for the determination;

(2) The information will be kept in the system for a period of five years from the date of the determination, as required by section 872 of Public Law 110–417, as amended (41 U.S.C. 2313), then archived;

(3) Each Federal awarding agency that considers making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award when the total Federal share of the Federal award is expected to include an amount of Federal funding in excess of the simplified acquisition threshold over the period of performance;

(4) The non-Federal entity may go to the awardee integrity and performance portal accessible through SAM (currently the Contractor Performance Assessment Reporting System (CPARS)) and comment on any information the system contains about the non-Federal entity itself; and

(5) Federal awarding agencies will consider that non-Federal entity's comments in determining whether the non-Federal entity is qualified for a future Federal award.

(d) If a Federal awarding agency enters information into the designated integrity and performance system accessible through SAM about a determination that a non-Federal entity is not qualified for a Federal award and subsequently:

(1) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days; and

(2) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(e) Federal awarding agencies must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the recipient asserts within seven calendar days to the Federal awarding agency that posted the information that some or all of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency that posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal awarding agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

§ 200.214 Suspension and debarment.

Non-Federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. The regulations in 2 CFR part 180 restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 200.215 Never contract with the enemy.

Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed $50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

§ 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115–232, section 889 for additional information.

(d) See also § 200.471.

■ 45. Revise subpart D to read as follows:

Subpart D—Post Federal Award Requirements

Sec.

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Property Standards

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200.328 Financial reporting.
200.329 Monitoring and reporting program performance.
200. 330 Reporting on real property.

Subrecipient Monitoring and Management

200.331 Subrecipient and contractor determinations.
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Record Retention and Access

200.334 Retention requirements for records.
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200.336 Methods for collection, transmission, and storage of information.
200.337 Access to records.
200.338 Restrictions on public access to records.

Remedies for Noncompliance

200.339 Remedies for noncompliance.
200.340 Termination.
200.341 Notification of termination requirement.
200.342 Opportunities to object, hearings, and appeals.
200.343 Effects of suspension and termination.

Closeout

200.344 Closeout.

Post-Closeout Adjustments and Continuing Responsibilities

200.345 Post-closeout adjustments and continuing responsibilities.

Collection of Amounts Due

200.346 Collection of amounts due.

Subpart D—Post Federal Award Requirements

§ 200.300 Statutory and national policy requirements.

(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, and public policy requirements: Including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR parts 25 and 170. See also statutory requirements for whistleblower protections at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310.

§ 200.301 Performance measurement.

(a) The Federal awarding agency must measure the recipient's performance to show achievement of program goals and objectives, share lessons learned, improve program outcomes, and foster adoption of promising practices. Program goals and objectives should be derived from program planning and design. See § 200.202 for more information. Where appropriate, the Federal award may include specific program goals, indicators, targets, baseline data, data collection, or expected outcomes (such as outputs, or services performance or public impacts of any of these) with an expected timeline for accomplishment. Where applicable, this should also include any performance measures or independent sources of data that may be used to measure progress. The Federal awarding agency will determine how performance progress is measured, which may differ by program. Performance measurement progress must be both measured and reported. See § 200.329 for more information on monitoring program performance. The Federal awarding agency may include program-specific requirements, as applicable. These requirements must be aligned, to the extent permitted by law, with the Federal awarding agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A–11, Preparation, Submission, and Execution of the Budget Part 6.

(b) The Federal awarding agency should provide recipients with clear performance goals, indicators, targets, and baseline data as described in § 200.211. Performance reporting frequency and content should be established to not only allow the Federal awarding agency to understand the recipient progress but also to facilitate identification of promising practices among recipients and build the evidence upon which the Federal awarding agency's program and performance decisions are made. See § 200.328 for more information on reporting program performance.

(c) This provision is designed to operate in tandem with evidence-related statutes (*e.g.;* The Foundations for Evidence-Based Policymaking Act of 2018, which emphasizes collaboration and coordination to advance data and evidence-building functions in the Federal government). The Federal awarding agency should also specify any requirements of award recipients' participation in a federally funded evaluation, and any evaluation activities required to be conducted by the Federal award.

§ 200.302 Financial management.

(a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also § 200.450.

(b) The financial management system of each non-Federal entity must provide for the following (see also §§ 200.334, 200.335, 200.336, and 200.337):

(1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award

identification must include, as applicable, the Assistance Listings title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §§ 200.328 and 200.329. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.

(3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, financial obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See § 200.303.

(5) Comparison of expenditures with budget amounts for each Federal award.

(6) Written procedures to implement the requirements of § 200.305.

(7) Written procedures for determining the allowability of costs in accordance with subpart E of this part and the terms and conditions of the Federal award.

§ 200.303 Internal controls.

The non-Federal entity must:

(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in ''Standards for Internal Control in the Federal Government'' issued by the Comptroller General of the United States or the ''Internal Control Integrated Framework'', issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal awards.

(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

(e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

§ 200.304 Bonds.

The Federal awarding agency may include a provision on bonding, insurance, or both in the following circumstances:

(a) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the non-Federal entity are not deemed adequate to protect the interest of the Federal Government.

(b) The Federal awarding agency may require adequate fidelity bond coverage where the non-Federal entity lacks sufficient coverage to protect the Federal Government's interest.

(c) Where bonds are required in the situations described above, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223.

§ 200.305 Federal payment.

(a) For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A–2000, ''Overall Disbursing Rules for All Federal Agencies''.

(b) For non-Federal entities other than states, payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also § 200.302(b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved, governmentwide information collection requests to request payment.

(1) The non-Federal entity must be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the non-Federal entity for direct program or project costs and the proportionate share of any allowable indirect costs. The non-Federal entity must make timely payment to contractors in accordance with the contract provisions.

(2) Whenever possible, advance payments must be consolidated to cover anticipated cash needs for all Federal awards made by the Federal awarding agency to the recipient.

(i) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer and must comply with applicable guidance in 31 CFR part 208.

(ii) Non-Federal entities must be authorized to submit requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as they like when electronic transfers are used, in accordance with the provisions of the Electronic Fund Transfer Act (15 U.S.C. 1693–1693r).

(3) Reimbursement is the preferred method when the requirements in this paragraph (b) cannot be met, when the Federal awarding agency sets a specific condition per § 200.208, or when the non-Federal entity requests payment by reimbursement. This method may be used on any Federal award for construction, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal award constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding

agency or pass-through entity must make payment within 30 calendar days after receipt of the billing, unless the Federal awarding agency or pass-through entity reasonably believes the request to be improper.

(4) If the non-Federal entity cannot meet the criteria for advance payments and the Federal awarding agency or pass-through entity has determined that reimbursement is not feasible because the non-Federal entity lacks sufficient working capital, the Federal awarding agency or pass-through entity may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency or pass-through entity must advance cash payments to the non-Federal entity to cover its estimated disbursement needs for an initial period generally geared to the non-Federal entity's disbursing cycle. Thereafter, the Federal awarding agency or pass-through entity must reimburse the non-Federal entity for its actual cash disbursements. Use of the working capital advance method of payment requires that the pass-through entity provide timely advance payments to any subrecipients in order to meet the subrecipient's actual cash disbursements. The working capital advance method of payment must not be used by the pass-through entity if the reason for using this method is the unwillingness or inability of the pass-through entity to provide timely advance payments to the subrecipient to meet the subrecipient's actual cash disbursements.

(5) To the extent available, the non-Federal entity must disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments.

(6) Unless otherwise required by Federal statutes, payments for allowable costs by non-Federal entities must not be withheld at any time during the period of performance unless the conditions of § 200.208, subpart D of this part, including § 200.339, or one or more of the following applies:

(i) The non-Federal entity has failed to comply with the project objectives, Federal statutes, regulations, or the terms and conditions of the Federal award.

(ii) The non-Federal entity is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Policies for Federal Credit Programs and Non-Tax Receivables.'' Under such conditions, the Federal awarding agency or pass-through entity may, upon reasonable notice, inform the non-Federal entity that payments must not be made for financial obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(iii) A payment withheld for failure to comply with Federal award conditions, but without suspension of the Federal award, must be released to the non-Federal entity upon subsequent compliance. When a Federal award is suspended, payment adjustments will be made in accordance with § 200.343.

(iv) A payment must not be made to a non-Federal entity for amounts that are withheld by the non-Federal entity from payment to contractors to assure satisfactory completion of work. A payment must be made when the non-Federal entity actually disburses the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(7) Standards governing the use of banks and other institutions as depositories of advance payments under Federal awards are as follows.

(i) The Federal awarding agency and pass-through entity must not require separate depository accounts for funds provided to a non-Federal entity or establish any eligibility requirements for depositories for funds provided to the non-Federal entity. However, the non-Federal entity must be able to account for funds received, obligated, and expended.

(ii) Advance payments of Federal funds must be deposited and maintained in insured accounts whenever possible.

(8) The non-Federal entity must maintain advance payments of Federal awards in interest-bearing accounts, unless the following apply:

(i) The non-Federal entity receives less than $250,000 in Federal awards per year.

(ii) The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on Federal cash balances.

(iii) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(iv) A foreign government or banking system prohibits or precludes interest-bearing accounts.

(9) Interest earned amounts up to $500 per year may be retained by the non-Federal entity for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.

(i) For returning interest on Federal awards paid through PMS, the refund should:

(A) Provide an explanation stating that the refund is for interest;

(B) List the PMS Payee Account Number(s) (PANs);

(C) List the Federal award number(s) for which the interest was earned; and

(D) Make returns payable to: Department of Health and Human Services.

(ii) For returning interest on Federal awards not paid through PMS, the refund should:

(A) Provide an explanation stating that the refund is for interest;

(B) Include the name of the awarding agency;

(C) List the Federal award number(s) for which the interest was earned; and

(D) Make returns payable to: Department of Health and Human Services.

(10) Funds, principal, and excess cash returns must be directed to the original Federal agency payment system. The non-Federal entity should review instructions from the original Federal agency payment system. Returns should include the following information:

(i) Payee Account Number (PAN), if the payment originated from PMS, or Agency information to indicate whom to credit the funding if the payment originated from ASAP, NSF, or another Federal agency payment system.

(ii) PMS document number and subaccount(s), if the payment originated from PMS, or relevant account numbers if the payment originated from another Federal agency payment system.

(iii) The reason for the return (*e.g.,* excess cash, funds not spent, interest, part interest part other, etc.)

(11) When returning funds or interest to PMS you must include the following as applicable:

(i) For ACH Returns:

Routing Number: 051036706
Account number: 303000
Bank Name and Location: Credit Gateway—ACH Receiver St. Paul, MN

(ii) For Fedwire Returns [1]:

Routing Number: 021030004
Account number: 75010501
Bank Name and Location: Federal Reserve Bank Treas NYC/Funds Transfer Division New York, NY

[1] Please note that the organization initiating payment is likely to incur a charge from their Financial Institution for this type of payment.

(iii) For International ACH Returns:

Beneficiary Account: Federal Reserve Bank of New York/ITS (FRBNY/ITS)
Bank: Citibank N.A. (New York)
Swift Code: CITIUS33
Account Number: 36838868
Bank Address: 388 Greenwich Street, New York, NY 10013 USA
Payment Details (Line 70): Agency Locator Code (ALC): 75010501
Name (abbreviated when possible) and ALC Agency POC

(iv) For recipients that do not have electronic remittance capability, please make check [2] payable to: ''The Department of Health and Human Services.''

Mail Check to Treasury approved lockbox:
HHS Program Support Center, P.O. Box 530231, Atlanta, GA 30353–0231

[2] Please allow 4–6 weeks for processing of a payment by check to be applied to the appropriate PMS account.

(v) Questions can be directed to PMS at 877–614–5533 or *PMSSupport@psc.hhs.gov.*

§ 200.306 Cost sharing or matching.

(a) Under Federal research proposals, voluntary committed cost sharing is not expected. It cannot be used as a factor during the merit review of applications or proposals, but may be considered if it is both in accordance with Federal awarding agency regulations and specified in a notice of funding opportunity. Criteria for considering voluntary committed cost sharing and any other program policy factors that may be used to determine who may receive a Federal award must be explicitly described in the notice of funding opportunity. See also §§ 200.414 and 200.204 and appendix I to this part.

(b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the non-Federal entity's records;

(2) Are not included as contributions for any other Federal award;

(3) Are necessary and reasonable for accomplishment of project or program objectives;

(4) Are allowable under subpart E of this part;

(5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;

(6) Are provided for in the approved budget when required by the Federal awarding agency; and

(7) Conform to other provisions of this part, as applicable.

(c) Unrecovered indirect costs, including indirect costs on cost sharing or matching may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency. Unrecovered indirect cost means the difference between the amount charged to the Federal award and the amount which could have been charged to the Federal award under the non-Federal entity's approved negotiated indirect cost rate.

(d) Values for non-Federal entity contributions of services and property must be established in accordance with the cost principles in subpart E of this part. If a Federal awarding agency authorizes the non-Federal entity to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of paragraph (d)(1) or (2) of this section.

(1) The value of the remaining life of the property recorded in the non-Federal entity's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the value described in paragraph (d)(1) of this section at the time of donation.

(e) Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for third-party volunteer services must be consistent with those paid for similar work by the non-Federal entity. In those instances in which the required skills are not found in the non-Federal entity, rates must be consistent with those paid for similar work in the labor market in which the non-Federal entity competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, necessary, allocable, and otherwise allowable may be included in the valuation.

(f) When a third-party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable, and indirect costs at either the third-party organization's approved federally-negotiated indirect cost rate or, a rate in accordance with § 200.414(d) provided these services employ the same skill(s) for which the employee is normally paid. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donated services so that reimbursement for the donated services will not be made.

(g) Donated property from third parties may include such items as equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Value assessed to donated property included in the cost sharing or matching share must not exceed the fair market value of the property at the time of the donation.

(h) The method used for determining cost sharing or matching for third-party-donated equipment, buildings and land for which title passes to the non-Federal entity may differ according to the purpose of the Federal award, if paragraph (h)(1) or (2) of this section applies.

(1) If the purpose of the Federal award is to assist the non-Federal entity in the acquisition of equipment, buildings or land, the aggregate value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the Federal award is to support activities that require the use of equipment, buildings or land, normally only depreciation charges for equipment and buildings may be made. However, the fair market value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges. See also § 200.420.

(i) The value of donated property must be determined in accordance with the usual accounting policies of the non-Federal entity, with the following qualifications:

(1) The value of donated land and buildings must not exceed its fair market value at the time of donation to the non-Federal entity as established by an independent appraiser (*e.g.,* certified real property appraiser or General Services Administration representative) and certified by a responsible official of the non-Federal entity as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601–4655) (Uniform Act) except as provided in the implementing regulations at 49 CFR part 24, ''Uniform Relocation Assistance And Real Property

Acquisition For Federal And Federally-Assisted Programs''.

(2) The value of donated equipment must not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment must not exceed its fair rental value.

(j) For third-party in-kind contributions, the fair market value of goods and services must be documented and to the extent feasible supported by the same methods used internally by the non-Federal entity.

(k) For IHEs, see also OMB memorandum M–01–06, dated January 5, 2001, Clarification of OMB A–21 Treatment of Voluntary Uncommitted Cost Sharing and Tuition Remission Costs.

§ 200.307 Program income.

(a) *General.* Non-Federal entities are encouraged to earn income to defray program costs where appropriate.

(b) *Cost of generating program income.* If authorized by Federal regulations or the Federal award, costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the Federal award.

(c) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a non-Federal entity are not program income unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income.

(d) *Property.* Proceeds from the sale of real property, equipment, or supplies are not program income; such proceeds will be handled in accordance with the requirements of the Property Standards §§ 200.311, 200.313, and 200.314, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

(e) *Use of program income.* If the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award, or give prior approval for how program income is to be used, paragraph (e)(1) of this section must apply. For Federal awards made to IHEs and nonprofit research institutions, if the Federal awarding agency does not specify in its regulations or the terms and conditions of the Federal award how program income is to be used, paragraph (e)(2) of this section must apply. In specifying alternatives to paragraphs (e)(1) and (2) of this section, the Federal awarding agency may distinguish between income earned by the recipient and income earned by subrecipients and between the sources, kinds, or amounts of income. When the Federal awarding agency authorizes the approaches in paragraphs (e)(2) and (3) of this section, program income in excess of any amounts specified must also be deducted from expenditures.

(1) *Deduction.* Ordinarily program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs unless the Federal awarding agency authorizes otherwise. Program income that the non-Federal entity did not anticipate at the time of the Federal award must be used to reduce the Federal award and non-Federal entity contributions rather than to increase the funds committed to the project.

(2) *Addition.* With prior approval of the Federal awarding agency (except for IHEs and nonprofit research institutions, as described in this paragraph (e)) program income may be added to the Federal award by the Federal agency and the non-Federal entity. The program income must be used for the purposes and under the conditions of the Federal award.

(3) *Cost sharing or matching.* With prior approval of the Federal awarding agency, program income may be used to meet the cost sharing or matching requirement of the Federal award. The amount of the Federal award remains the same.

(f) *Income after the period of performance.* There are no Federal requirements governing the disposition of income earned after the end of the period of performance for the Federal award, unless the Federal awarding agency regulations or the terms and conditions of the Federal award provide otherwise. The Federal awarding agency may negotiate agreements with recipients regarding appropriate uses of income earned after the period of performance as part of the grant closeout process. See also § 200.344.

(g) *License fees and royalties.* Unless the Federal statute, regulations, or terms and conditions for the Federal award provide otherwise, the non-Federal entity is not accountable to the Federal awarding agency with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under a Federal award to which 37 CFR part 401 is applicable.

§ 200.308 Revision of budget and program plans.

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see definition for *Federal share* in § 200.1) or only the Federal share, depending upon Federal awarding agency requirements. The budget and program plans include considerations for performance and program evaluation purposes whenever required in accordance with the terms and conditions of the award.

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.

(c) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for the following program or budget-related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or the Federal award.

(3) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with subpart E of this part as applicable.

(5) The transfer of funds budgeted for participant support costs to other categories of expense.

(6) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in § 200.333. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(7) Changes in the approved cost-sharing or matching provided by the non-Federal entity.

(8) The need arises for additional Federal funds to complete the project.

(d) No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§ 200.102 and 200.407.

(e) Except for requirements listed in paragraphs (c)(1) through (8) of this section, the Federal awarding agency is

authorized, at its option, to waive other cost-related and administrative prior written approvals contained in subparts D and E of this part. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's risk (*i.e.,* the Federal awarding agency is not required to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also § 200.458.

(2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (e)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension must not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior Federal awarding agency approval when:

(i) The terms and conditions of the Federal award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent budget periods.

(4) For Federal awards that support research, unless the Federal awarding agency provides otherwise in the Federal award or in the Federal awarding agency's regulations, the prior approval requirements described in this paragraph (e) are automatically waived (*i.e.,* recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the simplified acquisition threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. The Federal awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.

(g) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also § 200.407).

(h) For construction Federal awards, the recipient must request prior written approval promptly from the Federal awarding agency for budget revisions whenever paragraph (h)(1), (2), or (3) of this section applies:

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in subpart E.

(4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.

(5) When a Federal awarding agency makes a Federal award that provides support for construction and non-construction work, the Federal awarding agency may require the recipient to obtain prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(i) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the Federal awarding agency indicates a letter of request suffices.

(j) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

§ 200.309 Modifications to Period of Performance.

If a Federal awarding agency or pass-through entity approves an extension, or if a recipient extends under § 200.308(e)(2), the Period of Performance will be amended to end at the completion of the extension. If a termination occurs, the Period of Performance will be amended to end upon the effective date of termination. If a renewal award is issued, a distinct Period of Performance will begin.

Property Standards

§ 200.310 Insurance coverage.

The non-Federal entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

§ 200.311 Real property.

(a) *Title.* Subject to the requirements and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

(b) *Use.* Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:

(1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sell the property and compensate the Federal awarding agency. The amount due to the Federal awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-

Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.

§ 200.312 Federally-owned and exempt property.

(a) Title to federally-owned property remains vested in the Federal Government. The non-Federal entity must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization.

(b) If the Federal awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (*e.g.,* the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and nonprofit organizations in accordance with Executive Order 12999, ''Educational Technology: Ensuring Opportunity for All Children in the Next Century.''). The Federal awarding agency must issue appropriate instructions to the non-Federal entity.

(c) Exempt property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further responsibility to the Federal Government, based upon the explicit terms and conditions of the Federal award. The Federal awarding agency may exercise this option when statutory authority exists. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt property acquired under the Federal award remains with the Federal Government.

§ 200.313 Equipment.

See also § 200.439.

(a) *Title.* Subject to the requirements and conditions set forth in this section, title to equipment acquired under a Federal award will vest upon acquisition in the non-Federal entity. Unless a statute specifically authorizes the Federal agency to vest title in the non-Federal entity without further responsibility to the Federal Government, and the Federal agency elects to do so, the title must be a conditional title. Title must vest in the non-Federal entity subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project during the period of performance, or until the property is no longer needed for the purposes of the project.

(2) Not encumber the property without approval of the Federal awarding agency or pass-through entity.

(3) Use and dispose of the property in accordance with paragraphs (b), (c), and (e) of this section.

(b) *General.* A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. The Federal awarding agency may require the submission of the applicable common form for equipment. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

(i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then

(ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 200.307 to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the non-Federal entity is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in

Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

(1) Items of equipment with a current per unit fair market value of $5,000 or less may be retained, sold or otherwise disposed of with no further responsibility to the Federal awarding agency.

(2) Except as provided in § 200.312(b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair market value in excess of $5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

§ 200.314 Supplies.

See also § 200.453.

(a) Title to supplies will vest in the non-Federal entity upon acquisition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, the non-Federal entity must retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal Government for its share. The amount of compensation must be computed in the same manner as for equipment. See § 200.313 (e)(2) for the calculation methodology.

(b) As long as the Federal Government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

§ 200.315 Intangible property.

(a) Title to intangible property (see definition for *Intangible property* in § 200.1) acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in § 200.313(e).

(b) The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Federal awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(c) The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements.''

(d) The Federal Government has the right to:

(1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(e)(1) In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under a Federal award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency must request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the Federal awarding agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the Federal agency and the non-Federal entity. This fee is in addition to any fees the Federal awarding agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) Published research findings means when:

(i) Research findings are published in a peer-reviewed scientific or technical journal; or

(ii) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. ''Used by the Federal Government in developing an agency action that has the force and effect of law'' is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(3) Research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This ''recorded'' material excludes physical objects (*e.g.,* laboratory samples). Research data also do not include:

(i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

§ 200.316 Property trust relationship.

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Federal awarding agency may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

Procurement Standards

§ 200.317 Procurements by states.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

§ 200.318 General procurement standards.

(a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with applied to documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

§ 200.319 Competition.

(a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded

from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance or other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equivalent'' description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

(f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

§ 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) *Informal procurement methods.* When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT),* as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) *Micro-purchases*—(i) *Distribution.* The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) *Micro-purchase awards.* Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) *Micro-purchase thresholds.* The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) *Non-Federal entity increase to the micro-purchase threshold up to $50,000.* Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) *Non-Federal entity increase to the micro-purchase threshold over $50,000.* Micro-purchase thresholds higher than $50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) *Small purchases*—(i) *Small purchase procedures.* The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) *Simplified acquisition thresholds.* The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified

acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) *Formal procurement methods.* When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) *Sealed bids.* A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) *Proposals.* A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) *Noncompetitive procurement.* There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

§ 200.322 Domestic preferences for procurements.

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) ''Produced in the United States'' means, for iron and steel products, that

all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) ''Manufactured products'' means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

§ 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 200.324 Contract cost and price.

(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

§ 200.325 Federal awarding agency or pass-through entity review.

(a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

(1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a ''brand name'' product;

(4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

§ 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by law of

all persons supplying labor and material in the execution of the work provided for in the contract.

§ 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

Performance and Financial Monitoring and Reporting

§ 200.328 Financial reporting.

Unless otherwise approved by OMB, the Federal awarding agency must solicit only the OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future, OMB-approved, governmentwide data elements available from the OMB-designated standards lead. This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting. The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information.

§ 200.329 Monitoring and reporting program performance.

(a) *Monitoring by the non-Federal entity.* The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 200.332.

(b) *Reporting program performance.* The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information. As appropriate and in accordance with above mentioned information collections, the Federal awarding agency must require the recipient to relate financial data and accomplishments to performance goals and objectives of the Federal award. Also, in accordance with above mentioned common information collections, and when required by the terms and conditions of the Federal award, recipients must provide cost information to demonstrate cost effective practices (*e.g.,* through unit cost data). In some instances (*e.g.,* discretionary research awards), this will be limited to the requirement to submit technical performance reports (to be evaluated in accordance with Federal awarding agency policy). Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured.

(c) *Non-construction performance reports.* The Federal awarding agency must use standard, governmentwide OMB-approved data elements for collection of performance information including performance progress reports, Research Performance Progress Reports.

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Reports submitted annually by the non-Federal entity and/or pass-through entity must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report submitted by the non-Federal entity and/or pass-through entity must be due no later than 120 calendar days after the period of performance end date. A subrecipient must submit to the pass-through entity, no later than 90 calendar days after the period of performance end date, all final performance reports as required by the terms and conditions of the Federal award. See also § 200.344. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(2) As appropriate in accordance with above mentioned performance reporting, these reports will contain, for each Federal award, brief information on the following unless other data elements are approved by OMB in the agency information collection request:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(d) *Construction performance reports.* For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

(e) *Significant developments.* Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(f) *Site visits.* The Federal awarding agency may make site visits as warranted by program needs.

(g) *Performance report requirement waiver.* The Federal awarding agency may waive any performance report required by this part if not needed.

§ 200. 330 Reporting on real property.

The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal Government retains an interest, unless the Federal interest in the real property extends 15

years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (*e.g.,* every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

Subrecipient Monitoring and Management

§ 200.331 Subrecipient and contractor determinations.

The non-Federal entity may concurrently receive Federal awards as a recipient, a subrecipient, and a contractor, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a subrecipient or a contractor. The Federal awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) *Subrecipients.* A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the subrecipient. See definition for *Subaward* in § 200.1 of this part. Characteristics which support the classification of the non-Federal entity as a subrecipient include when the non-Federal entity:

(1) Determines who is eligible to receive what Federal assistance;

(2) Has its performance measured in relation to whether objectives of a Federal program were met;

(3) Has responsibility for programmatic decision-making;

(4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and

(5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(b) *Contractors.* A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the contractor. See the definition of *contract* in § 200.1 of this part. Characteristics indicative of a procurement relationship between the non-Federal entity and a contractor are when the contractor:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(c) *Use of judgment in making determination.* In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a subrecipient or a contractor, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward or a procurement contract.

§ 200.332 Requirements for pass-through entities.

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

(1) Federal award identification.

(i) Subrecipient name (which must match the name associated with its unique entity identifier);

(ii) Subrecipient's unique entity identifier;

(iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date (see the definition of *Federal award date* in § 200.1 of this part) of award to the recipient by the Federal agency;

(v) Subaward Period of Performance Start and End Date;

(vi) Subaward Budget Period Start and End Date;

(vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;

(viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation;

(ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;

(x) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

(xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;

(xii) Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement;

(xiii) Identification of whether the award is R&D; and

(xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged) per § 200.414.

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4)(i) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient, which is either:

(A) The negotiated indirect cost rate between the pass-through entity and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient. If basing the rate on a previously negotiated rate, the pass-through entity is not required to collect information justifying this rate, but may elect to do so;

(B) The de minimis indirect cost rate.

(ii) The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a Federally approved rate. Subrecipients can elect to use the cost allocation method to account for indirect costs in accordance with § 200.405(d).

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial

statements as necessary for the pass-through entity to meet the requirements of this part; and

(6) Appropriate terms and conditions concerning closeout of the subaward.

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraphs (d) and (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F of this part, and the extent to which the same or similar subaward has been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of Federal awarding agency monitoring (*e.g.,* if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.208.

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and written confirmation from the subrecipient, highlighting the status of actions planned or taken to address Single Audit findings related to the particular subaward.

(3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) The pass-through entity is responsible for resolving audit findings specifically related to the subaward and not responsible for resolving cross-cutting findings. If a subrecipient has a current Single Audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (*e.g.,* has been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section § 300.513(a)(3)(vii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters; and

(2) Performing on-site reviews of the subrecipient's program operations;

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425.

(f) Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in § 200.501.

(g) Consider whether the results of the subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the pass-through entity's own records.

(h) Consider taking enforcement action against noncompliant subrecipients as described in § 200.339 of this part and in program regulations.

§ 200.333 Fixed amount subawards.

With prior written approval from the Federal awarding agency, a pass-through entity may provide subawards based on fixed amounts up to the Simplified Acquisition Threshold, provided that the subawards meet the requirements for fixed amount awards in § 200.201.

Record Retention and Access

§ 200.334 Retention requirements for records.

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

(a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

(c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.

(e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

(f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the proposal, plan, or other computation is

required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 200.335 Requests for transfer of records.

The Federal awarding agency must request transfer of certain records to its custody from the non-Federal entity when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, the Federal awarding agency may make arrangements for the non-Federal entity to retain any records that are continuously needed for joint use.

§ 200.336 Methods for collection, transmission, and storage of information.

The Federal awarding agency and the non-Federal entity should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper in accordance with applicable legislative requirements. A machine-readable format is a format in a standard computer language (not English text) that can be read automatically by a web browser or computer system. The Federal awarding agency or pass-through entity must always provide or accept paper versions of Federal award-related information to and from the non-Federal entity upon request. If paper copies are submitted, the Federal awarding agency or pass-through entity must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

§ 200.337 Access to records.

(a) *Records of non-Federal entities.* The Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

(b) *Extraordinary and rare circumstances.* Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the non-Federal entity and the Federal awarding agency. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.

(c) *Expiration of right of access.* The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and pass-through entities must not impose any other access requirements upon non-Federal entities.

§ 200.338 Restrictions on public access to records.

No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under § 200.315. Unless required by Federal, state, local, and tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

Remedies for Noncompliance

§ 200.339 Remedies for noncompliance.

If a non-Federal entity fails to comply with the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in § 200.208. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(c) Wholly or partly suspend or terminate the Federal award.

(d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency).

(e) Withhold further Federal awards for the project or program.

(f) Take other remedies that may be legally available.

§ 200.340 Termination.

(a) The Federal award may be terminated in whole or in part as follows:

(1) By the Federal awarding agency or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;

(2) By the Federal awarding agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

(3) By the Federal awarding agency or pass-through entity with the consent of the non-Federal entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

(4) By the non-Federal entity upon sending to the Federal awarding agency or pass-through entity written notification setting forth the reasons for

such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Federal awarding agency or pass-through entity may terminate the Federal award in its entirety; or

(5) By the Federal awarding agency or pass-through entity pursuant to termination provisions included in the Federal award.

(b) A Federal awarding agency should clearly and unambiguously specify termination provisions applicable to each Federal award, in applicable regulations or in the award, consistent with this section.

(c) When a Federal awarding agency terminates a Federal award prior to the end of the period of performance due to the non-Federal entity's material failure to comply with the Federal award terms and conditions, the Federal awarding agency must report the termination to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS).

(1) The information required under paragraph (c) of this section is not to be reported to designated integrity and performance system until the non-Federal entity either—

(i) Has exhausted its opportunities to object or challenge the decision, see § 200.342; or

(ii) Has not, within 30 calendar days after being notified of the termination, informed the Federal awarding agency that it intends to appeal the Federal awarding agency's decision to terminate.

(2) If a Federal awarding agency, after entering information into the designated integrity and performance system about a termination, subsequently:

(i) Learns that any of that information is erroneous, the Federal awarding agency must correct the information in the system within three business days;

(ii) Obtains an update to that information that could be helpful to other Federal awarding agencies, the Federal awarding agency is strongly encouraged to amend the information in the system to incorporate the update in a timely way.

(3) Federal awarding agencies, must not post any information that will be made publicly available in the non-public segment of designated integrity and performance system that is covered by a disclosure exemption under the Freedom of Information Act. If the non-Federal entity asserts within seven calendar days to the Federal awarding agency who posted the information, that some of the information made publicly available is covered by a disclosure exemption under the Freedom of Information Act, the Federal awarding agency who posted the information must remove the posting within seven calendar days of receiving the assertion. Prior to reposting the releasable information, the Federal agency must resolve the issue in accordance with the agency's Freedom of Information Act procedures.

(d) When a Federal award is terminated or partially terminated, both the Federal awarding agency or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in §§ 200.344 and 200.345.

§ 200.341 Notification of termination requirement.

(a) The Federal agency or pass-through entity must provide to the non-Federal entity a notice of termination.

(b) If the Federal award is terminated for the non-Federal entity's material failure to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that—

(1) The termination decision will be reported to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS);

(2) The information will be available in the OMB-designated integrity and performance system for a period of five years from the date of the termination, then archived;

(3) Federal awarding agencies that consider making a Federal award to the non-Federal entity during that five year period must consider that information in judging whether the non-Federal entity is qualified to receive the Federal award, when the Federal share of the Federal award is expected to exceed the simplified acquisition threshold over the period of performance;

(4) The non-Federal entity may comment on any information the OMB-designated integrity and performance system contains about the non-Federal entity for future consideration by Federal awarding agencies. The non-Federal entity may submit comments to the awardee integrity and performance portal accessible through SAM (currently (CPARS).

(5) Federal awarding agencies will consider non-Federal entity comments when determining whether the non-Federal entity is qualified for a future Federal award.

(c) Upon termination of a Federal award, the Federal awarding agency must provide the information required under FFATA to the Federal website established to fulfill the requirements of FFATA, and update or notify any other relevant governmentwide systems or entities of any indications of poor performance as required by 41 U.S.C. 417b and 31 U.S.C. 3321 and implementing guidance at 2 CFR part 77 (forthcoming at time of publication). See also the requirements for Suspension and Debarment at 2 CFR part 180.

§ 200.342 Opportunities to object, hearings, and appeals.

Upon taking any remedy for non-compliance, the Federal awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the Federal awarding agency. The Federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.

§ 200.343 Effects of suspension and termination.

Costs to the non-Federal entity resulting from financial obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the Federal awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:

(a) The costs result from financial obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and

(b) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

Closeout

§ 200.344 Closeout.

The Federal awarding agency or pass-through entity will close out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. If the non-Federal entity fails to

complete the requirements, the Federal awarding agency or pass-through entity will proceed to close out the Federal award with the information available. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

(a) The recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. A subrecipient must submit to the pass-through entity, no later than 90 calendar days (or an earlier date as agreed upon by the pass-through entity and subrecipient) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested and justified by the non-Federal entity, as applicable.

(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for costs meeting the requirements in Subpart E of this part under the Federal award being closed out.

(d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A–129 and see § 200.346, for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.310 through 200.316 and 200.330.

(g) When a recipient or subrecipient completes all closeout requirements, the Federal awarding agency or pass-through entity must promptly complete all closeout actions for Federal awards. The Federal awarding agency must make every effort to complete closeout actions no later than one year after the end of the period of performance unless otherwise directed by authorizing statutes. Closeout actions include Federal awarding agency actions in the grants management and payment systems.

(h) If the non-Federal entity does not submit all reports in accordance with this section and the terms and conditions of the Federal Award, the Federal awarding agency must proceed to close out with the information available within one year of the period of performance end date.

(i) If the non-Federal entity does not submit all reports in accordance with this section within one year of the period of performance end date, the Federal awarding agency must report the non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB-designated integrity and performance system (currently FAPIIS). Federal awarding agencies may also pursue other enforcement actions per § 200.339.

Post-Closeout Adjustments and Continuing Responsibilities

§ 200.345 Post-closeout adjustments and continuing responsibilities.

(a) The closeout of a Federal award does not affect any of the following:

(1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The requirement for the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) The ability of the Federal awarding agency to make financial adjustments to a previously closed award such as resolving indirect cost payments and making final payments.

(4) Audit requirements in subpart F of this part.

(5) Property management and disposition requirements in §§ 200.310 through 200.316 of this subpart.

(6) Records retention as required in §§ 200.334 through 200.337 of this subpart.

(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

Collection of Amounts Due

§ 200.346 Collection of amounts due.

(a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the Federal awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the non-Federal entity; or

(3) Other action permitted by Federal statute.

(b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Cost Principles

■ 46. Amend § 200.400 by revising paragraph (e) and (g) to read as follows:

§ 200.400 Policy guide.

* * * * *

(e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered. See the definition of *indirect (facilities & administrative (F&A)) costs* in § 200.1 of this part.

* * * * *

(g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless

explicitly authorized by the terms and conditions of the Federal award. See also § 200.307.

■ 47. Amend § 200.401 by revising paragraphs (a)(3) and (4), (b), and (c) to read as follows:

§ 200.401 Application.

(a) * * *

(3) Fixed amount awards. See also § 200.1 Definitions and 200.201.

(4) Federal awards to hospitals (see appendix IX to this part).

* * * * *

(b) *Federal contract.* Where a Federal contract awarded to a non-Federal entity is subject to the Cost Accounting Standards (CAS), it incorporates the applicable CAS clauses, Standards, and CAS administration requirements per the 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). CAS applies directly to the CAS-covered contract and the Cost Accounting Standards at 48 CFR parts 9904 or 9905 takes precedence over the cost principles in this subpart E with respect to the allocation of costs. When a contract with a non-Federal entity is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (*e.g.,* CAS 414—48 CFR 9904.414, Cost of Money as an Element of the Cost of Facilities Capital, and CAS 417—48 CFR 9904.417, Cost of Money as an Element of the Cost of Capital Assets Under Construction), apply rather the allowability provisions of § 200.449. In complying with those requirements, the non-Federal entity's application of cost accounting practices for estimating, accumulating, and reporting costs for other Federal awards and other cost objectives under the CAS-covered contract still must be consistent with its cost accounting practices for the CAS-covered contracts. In all cases, only one set of accounting records needs to be maintained for the allocation of costs by the non-Federal entity.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit entities for purpose of applicability of cost principles. Such nonprofit organizations must operate under Federal cost principles applicable to for-profit entities located at 48 CFR 31.2. A listing of these organizations is contained in appendix VIII to this part. Other organizations, as approved by the cognizant agency for indirect costs, may be added from time to time.

■ 48. Amend § 200.403 by revising paragraphs (f) and (g) and adding paragraph (h) to read as follows:

§ 200.403 Factors affecting allowability of costs.

* * * * *

(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also § 200.306(b).

(g) Be adequately documented. See also §§ 200.300 through 200.309 of this part.

(h) Cost must be incurred during the approved budget period. The Federal awarding agency is authorized, at its discretion, to waive prior written approvals to carry forward unobligated balances to subsequent budget periods pursuant to § 200.308(e)(3).

■ 49. Amend § 200.405 by revising paragraph (d) to read as follows:

§ 200.405 Allocable costs.

* * * * *

(d) Direct cost allocation principles: If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefitted projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 200.310 through 200.316 and 200.439.

* * * * *

■ 50. Amend § 200.406 by revising paragraph (b) to read as follows:

§ 200.406 Applicable credits.

* * * * *

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. (See §§ 200.436 and 200.468, for areas of potential application in the matter of Federal financing of activities.)

■ 51. Amend § 200.407 by revising paragraphs (g) and (y) to read as follows:

§ 200.407 Prior written approval (prior approval).

* * * * *

(g) § 200.333 Fixed amount subawards;

* * * * *

(y) § 200.475 Travel costs.

■ 52. Revise § 200.409 to read as follows:

§ 200.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles in this part describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart are only applicable to certain types of non-Federal entities, as specified in the following sections:

(a) Direct and Indirect (F&A) Costs (§§ 200.412–200.415) of this subpart;

(b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 and 200.417) of this subpart; and

(c) Special Considerations for Institutions of Higher Education (§§ 200.418 and 200.419) of this subpart.

■ 53. Revise § 200.410 to read as follows:

§ 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also §§ 200.300 through 200.309 in subpart D of this part.

■ 54. Amend § 200.413 by revising paragraphs (a), (b), and (f) to read as follows:

§ 200.413 Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either

direct or indirect (F&A) costs. See also § 200.405.

(b) *Application to Federal awards.* Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also be considered direct costs. Examples include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, program evaluation costs, or other institutional service operations.

* * * * *

(f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also § 200.454.

(2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§ 200.454 and 200.450.

(3) Promotion, lobbying, and other forms of public relations. See also §§ 200.421 and 200.450.

(4) Conferences except those held to conduct the general administration of the non-Federal entity. See also § 200.432.

(5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity. See also § 200.442.

(6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431.

■ 55. Amend § 200.414 by revising paragraphs (a), (c) introductory text, (c)(3) and (4), (d), (f), and (g) and adding paragraph (h) to read as follows:

§ 200.414 Indirect (F&A) costs.

(a) *Facilities and administration classification.* For major Institutions of Higher Education (IHE) and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: ''Facilities'' and ''Administration.'' ''Facilities'' is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. ''Administration'' is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of ''Facilities'' (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the ''Administration'' category; for IHEs, they are included in the ''Facilities'' category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in appendix III to this part, and Rate Determination for Institutions of Higher Education paragraph C. 11. Major nonprofit organizations are those which receive more than $10 million dollars in direct Federal funding.

* * * * *

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See also § 200.306.)

* * * * *

(3) The Federal awarding agency must implement, and make publicly available, the policies, procedures and general decision-making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) As required under § 200.204, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in § 200.332(a)(4).

* * * * *

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that does not have a current negotiated (including provisional) rate, except for those non-Federal entities described in appendix VII to this part, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. No documentation is required to justify the 10% de minimis indirect cost rate. As described in § 200.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a current federally-negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

(h) The federally negotiated indirect rate, distribution base, and rate type for a non-Federal entity (except for the Indian tribes or tribal organizations, as defined in the Indian Self Determination, Education and Assistance Act, 25 U.S.C. 450b(1)) must be available publicly on an OMB-designated Federal website.

■ 56. Amend § 200.415 by revising paragraphs (b)(1) and (2), (c), and (d) to read as follows:

§ 200.415 Required certifications.

* * * * *

(b) * * *

(1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in appendices III through VII, and IX of this part. The certificate must be signed on behalf of the non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.

(2) Unless the non-Federal entity has elected the option under § 200.414(f), the Federal Government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such

a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

(c) Certifications by nonprofit organizations as appropriate that they did not meet the definition of a major nonprofit organization as defined in § 200.414(a).

(d) See also § 200.450 for another required certification.

■ 57. Revise § 200.417 to read as follows:

§ 200.417 Interagency service.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200.

■ 58. Amend § 200.418 by revising paragraph (a) to read as follows:

§ 200.418 Costs incurred by states and local governments.

* * * * *

(a) The costs meet the requirements of § 200.402–411 of this subpart;

* * * * *

■ 59. Amend § 200.419 by revising paragraphs (a), (b) introductory text, and (b)(1) and (2) to read as follows:

§ 200.419 Cost accounting standards and disclosure statement.

(a) An IHE that receive an aggregate total $50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts and subcontracts awarded to the IHEs are subject to the broader range of CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

(b) *Disclosure statement.* An IHE that receives an aggregate total $50 million or more in Federal awards and instruments subject to this subpart (as specified in § 200.101) during its most recently completed fiscal year must disclose their cost accounting practices by filing a Disclosure Statement (DS–2), which is reproduced in Appendix III to Part 200. With the approval of the cognizant agency for indirect costs, an IHE may meet the DS–2 submission by submitting the DS–2 for each business unit that received $50 million or more in Federal awards and instruments.

(1) The DS–2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit. The initial DS–2 and revisions to the DS–2 must be submitted in coordination with the IHE's indirect (F&A) rate proposal, unless an earlier submission is requested by the cognizant agency for indirect costs. IHEs with CAS-covered contracts or subcontracts meeting the dollar threshold in 48 CFR 9903.202–1(f) must submit their initial DS–2 or revisions no later than prior to the award of a CAS-covered contract or subcontract.

(2) An IHE must maintain an accurate DS–2 and comply with disclosed cost accounting practices. An IHE must file amendments to the DS–2 to the cognizant agency for indirect costs in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change after it has notified the Federal cognizant agency for indirect costs. If the change represents a variation from 2 CFR part 200, the change may require approval by the Federal cognizant agency for indirect costs, in accordance with § 200.102(b). Amendments of a DS–2 may be submitted at any time. Resubmission of a complete, updated DS–2 is discouraged except when there are extensive changes to disclosed practices.

* * * * *

■ 60. Revise § 200.420 to read as follows:

§ 200.420 Considerations for selected items of cost.

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of Subtitle II of this subpart. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§ 200.402 through 200.411. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 200.403 must be applied in determining allowability. See also § 200.102.

■ 61. Amend § 200.421 by revising paragraphs (b)(1) and (e)(2) to read as follows:

§ 200.421 Advertising and public relations.

* * * * *

(b) * * *

(1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also § 200.463);

* * * * *

(e) * * *

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also § 200.432), including:

* * * * *

■ 62. Revise § 200.422 to read as follows:

§ 200.422 Advisory councils.

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal awarding agency or as an indirect cost where allocable to Federal awards. See § 200.444, applicable to States, local governments, and Indian tribes.

■ 63. Amend § 200.425 by revising paragraphs (a)(1) and (2) and (c) introductory text to read as follows:

§ 200.425 Audit services.

* * * * *

(a) * * *

(1) Any costs when audits required by the Single Audit Act and subpart F of this part have not been conducted or have been conducted but not in accordance therewith; and

(2) Any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and subpart F of this part because its expenditures under Federal awards are less than $750,000 during the non-Federal entity's fiscal year.

* * * * *

(c) Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with subpart D, §§ 200.331–333) who are exempted from the requirements of

the Single Audit Act and subpart F of this part. This cost is allowable only if the agreed-upon-procedures engagements are:

* * * * *

■ 64. Revise § 200.426 to read as follows:

§ 200.426 Bad debts.

Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also § 200.428.

■ 65. Revise § 200.428 to read as follows:

§ 200.428 Collections of improper payments.

The costs incurred by a non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in § 200.305.

■ 66. Revise § 200.429 to read as follows:

§ 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as provided for in (B)(9) Student Administration and Services, in appendix III to this part, as activity costs.

■ 67. Amend § 200.430 by revising paragraphs (a) introductory text and (a)(3), the paragraph (h) subject heading, and paragraphs (h)(3), (h)(8)(iv), and (h)(8)(viii)(C) to read as follows:

§ 200.430 Compensation—personal services.

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in § 200.431. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

* * * * *

(3) Is determined and supported as provided in paragraph (i) of this section, when applicable.

* * * * *

(h) *Institutions of Higher Education (IHEs).* * * *

(3) *Intra-Institution of Higher Education (IHE) consulting.* Intra-IHE consulting by faculty should be undertaken as an IHE responsibility requiring no compensation in addition to IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the Federal awarding agency.

* * * * *

(iv) Encompass federally-assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

* * * * *

(viii) * * *

(C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal award based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

* * * * *

■ 68. Revise § 200.431 to read as follows:

§ 200.431 Compensation—fringe benefits.

(a) *General.* Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

(i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) *Fringe benefits.* The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.

(d) *Cost objectives.* Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also § 200.447(d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or

workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (*e.g.,* post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.

(f) *Automobiles.* That portion of automobile costs furnished by the non-Federal entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) *Pension plan costs.* Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) Except for State and Local Governments, the cost assigned to each fiscal year should be determined in accordance with GAAP.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the ''Cost Accounting Standard for Composition and Measurement of Pension Costs'' (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301–1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six-month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six-month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) *Post-retirement health.* Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six-month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six-month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity contribution in a future period.

(4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums, or

(ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government must receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(i) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose

employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part; or

(iv) Circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its responsibility to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(j) *For IHEs only.* (1) Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466, for treatment of tuition remission provided to students.

(k) *Fringe benefit programs and other benefit costs.* For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§ 200.402 through 200.411;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal Government.

■ 69. Revise § 200.432 to read as follows:

§ 200.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The Federal awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§ 200.438, 200.456, and 200.475.

■ 70. Amend § 200.433 by revising paragraphs (b) and (c) to read as follows:

§ 200.433 Contingency provisions.

* * * * *

(b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also §§ 200.300 and 200.403 of this part); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-Federal entity's records.

(c) Payments made by the Federal awarding agency to the non-Federal entity's ''contingency reserve'' or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 200.431 and 200.447.

■ 71. Amend § 200.434 by revising paragraphs (b), (c), (f), and (g)(2) to read as follows:

§ 200.434 Contributions and donations.

* * * * *

(b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and property may be used to meet cost sharing or matching requirements (see § 200.306). Depreciation on donated assets is permitted in accordance with § 200.436, as long as the donated property is not counted towards cost sharing or matching requirements.

(c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity by professional

and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of § 200.306.

* * * * *

(f) Fair market value of donated services must be computed as described in § 200.306.

* * * * *

(g) * * *

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in § 200.300 of this part. The value of the donations must be determined in accordance with § 200.300. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

■ 72. Amend § 200.436 by revising paragraphs (c) introductory text, (c)(3) and (4), and (e) to read as follows:

§ 200.436 Depreciation.

* * * * *

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the computation of depreciation, the acquisition cost will exclude:

* * * * *

(3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity that are already claimed as matching or where law or agreement prohibits recovery;

(4) Any asset acquired solely for the performance of a non-Federal award; and

* * * * *

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation must be maintained.

■ 73. Amend § 200.439 by revising paragraphs (a) and (b)(3) and (7) to read as follows:

§ 200.439 Equipment and other capital expenditures.

(a) See § 200.1 for the definitions of *capital expenditures, equipment, special purpose equipment, general purpose equipment, acquisition cost,* and *capital assets.*

* * * * *

(b) * * *

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See § 200.436, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465.

* * * * *

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436.

■ 74. Revise § 200.441 to read as follows:

§ 200.441 Fines, penalties, damages and other settlements.

Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency. See also § 200.435.

■ 75. Revise § 200.442 to read as follows:

§ 200.442 Fund raising and investment management costs.

(a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in § 200.460.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fund-raising and investment activities must be allocated as an appropriate share of indirect costs under the conditions described in § 200.413.

■ 76. Amend § 200.443 by revising paragraphs (b)(1) and (3) and (d) to read as follows:

§ 200.443 Gains and losses on disposition of depreciable assets.

* * * * *

(b) * * *

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 200.436 and 200.439.

* * * * *

(3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in § 200.447.

* * * * *

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with §§ 200.310 through 200.316 of this part.

■ 77. Amend § 200.444 by revising paragraphs (a) introductory text, (a)(4), and (b) to read as follows:

§ 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in § 200.475). Unallowable costs include:

* * * * *

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435); and

* * * * *

(b) For Indian tribes and Councils of Governments (COGs) (see definition for *Local government* in § 200.1 of this part), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

■ 78. Amend § 200.447 by revising paragraph (a)(4) to read as follows:

§ 200.447 Insurance and indemnification.

(a) * * *

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see § 200.431). The cost of such insurance when the non-Federal entity is

identified as the beneficiary is unallowable.

* * * * *

■ 79. Amend § 200.448 by revising paragraph (a)(1)(iii) to read as follows:

§ 200.448 Intellectual property.

(a) * * *

(1) * * *

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also § 200.459).

* * * * *

■ 80. Amend § 200.449 by revising paragraphs (b)(1) and (c)(4) to read as follows:

§ 200.449 Interest.

* * * * *

(b) *Capital assets.* (1) Capital assets is defined as noted in § 200.1 of this part. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

* * * * *

(c) * * *

(4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a lease contract that transfers ownership by the end of the contract may be determined less costly than purchasing through other types of debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

* * * * *

■ 81. Amend § 200.450 by revising paragraphs (a), (c)(2)(v) and (vi), (c)(2)(vii)(A) introductory text to read as follows:

§ 200.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, or cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, ''New Restrictions on Lobbying'' published on February 26, 1990, including definitions, and the Office of Management and Budget ''Governmentwide Guidance for New Restrictions on Lobbying'' and notices published on December 20, 1989, June 15, 1990, January 15, 1992, and January 19, 1996.

* * * * *

(c) * * *

(2) * * *

(v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of § 200.413.

(vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of this section have been complied with. (See also § 200.415.)

(vii)(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in § 200.302 with respect to lobbying costs during any particular calendar month when:

* * * * *

■ 82. Revise § 200.452 to read as follows:

§ 200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439). These costs are only allowable to the extent not paid through rental or other agreements.

■ 83. Amend § 200.454 by revising paragraph (e) to read as follows:

§ 200.454 Memberships, subscriptions, and professional activity costs.

* * * * *

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See also § 200.450.

■ 84. Revise § 200.456 to read as follows:

§ 200.456 Participant support costs.

Participant support costs as defined in § 200.1 are allowable with the prior approval of the Federal awarding agency.

■ 85. Revise § 200.457 to read as follows:

§ 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 200.439.

■ 86. Revise § 200.458 to read as follows:

§ 200.458 Pre-award costs.

Pre-award costs are those incurred prior to the effective date of the Federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency. If charged to the award, these costs must be charged to the initial budget period of the award, unless otherwise specified by the Federal awarding agency or pass-through entity.

■ 87. Amend § 200.459 by revising paragraph (a) to read as follows:

§ 200.459 Professional service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, subject to paragraphs (b) and (c) of this section when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under § 200.435.

* * * * *

■ 88. Amend § 200.461 by revising paragraph (b)(3) to read as follows:

§ 200.461 Publication and printing costs.

* * * * *

(b) * * *

(3) The non-Federal entity may charge the Federal award during closeout for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award. If charged to the award, these costs must be charged to the final budget period of the award, unless otherwise specified by the Federal awarding agency.

■ 89. Amend § 200.463 by revising paragraph (c) to read as follows:

§ 200.463 Recruiting costs.

* * * * *

(c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal Government. See also § 200.464.

* * * * *

■ 90. Amend § 200.464 by revising paragraph (c) to read as follows:

§ 200.464 Relocation costs of employees.

* * * * *

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been charged to a Federal award and the employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity must refund or credit the Federal Government for its share of the cost. If dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods, the costs of travel to an overseas location must be considered travel costs in accordance with § 200.474 Travel costs, and not this relocations costs of employees (See also § 200.464).

* * * * *

■ 91. Amend § 200.465 by adding paragraphs (d) through (f) to read as follows:

§ 200.465 Rental costs of real property and equipment.

* * * * *

(d) Rental costs under leases which are required to be accounted for as a financed purchase under GASB standards or a finance lease under FASB standards under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. Interest costs related to these leases are allowable to the extent they meet the criteria in § 200.449. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(e) Rental or lease payments are allowable under lease contracts where the non-Federal entity is required to recognize an intangible right-to-use lease asset (per GASB) or right of use operating lease asset (per FASB) for purposes of financial reporting in accordance with GAAP.

(f) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

■ 92. Amend § 200.466 by revising paragraph (b) to read as follows:

§ 200.466 Scholarships and student aid costs.

* * * * *

(b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in § 200.430, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also § 200.431.

■ 93. Revise § 200.467 to read as follows:

§ 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under § 200.421) are unallowable, except as direct costs, with prior approval by the Federal awarding agency when necessary for the performance of the Federal award.

■ 94. Amend § 200.468 by revising paragraph (a) and (b)(2) to read as follows:

§ 200.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the non-Federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraph (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under § 200.406.

* * * * *

(b) * * *

(2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under-applied costs of the previous period(s).

* * * * *

§§ 200.471 through 200.475 [Redesignated as §§ 200.472 through 200.476]

■ 95. Redesignate §§ 200.471 through 200.475 as §§ 200.472 through 200.476.

■ 96. Add new § 200.471 to read as follows:

§ 200.471 Telecommunication costs and video surveillance costs

(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, cloud servers are allowable except for the following circumstances:

(b) Obligating or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:

(1) Procure or obtain, extend or renew a contract to procure or obtain;

(2) Enter into a contract (or extend or renew a contract) to procure; or

(3) Obtain the equipment, services, or systems.

■ 97. Amend newly redesignated § 200.472 by revising paragraphs (c)(2), (e)(1)(i), and (f) to read as follows:

§ 200.472 Termination costs.

* * * * *

(c) * * *

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal awarding agency (see also § 200.313 (d)), and

* * * * *

(e) * * *

(1) * * *

(i) The preparation and presentation to the Federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see subpart D, including §§ 200.339–200.343); and

* * * * *

(f) Claims under subawards, including the allocable portion of claims which are common to the Federal award and to other work of the non-Federal entity, are generally allowable. An appropriate share of the non-Federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in § 200.414. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

■ 98. Amend newly redesignated § 200.475 by revising paragraphs (a) and (c)(2) to read as follows:

§ 200.475 Travel costs.

(a) *General.* Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies. Notwithstanding the provisions of § 200.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award.

* * * * *

(c) * * *

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the Federal awarding agency. See also § 200.432.

* * * * *

■ 99. Revise newly redesignated § 200.476 to read as follows:

§ 200.476 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also § 200.475.

Subpart F—Audit Requirements

■ 100. Amend § 200.501 by revising paragraphs (b), (c), (d), (f), and (h) to read as follows:

§ 200.501 Audit requirements.

* * * * *

(b) *Single audit.* A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with § 200.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with § 200.507. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than $750,000.* A non-Federal entity that expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in § 200.503, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

* * * * *

(f) *Subrecipients and contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section § 200.331 sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

* * * * *

(h) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also § 200.332.

■ 101. Amend § 200.503 by revising paragraph (e) to read as follows:

§ 200.503 Relation to other audit requirements.

* * * * *

(e) Request for a program to be audited as a major program. A Federal awarding agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal awarding agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such a request by informing the Federal awarding agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in § 200.518 and, if not, the estimated incremental cost. The Federal awarding agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal awarding agency request, and the Federal awarding agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

■ 102. Revise § 200.505 to read as follows:

§ 200.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in § 200.339.

■ 103. Revise § 200.506 to read as follows:

§ 200.506 Audit costs.

See § 200.425.

■ 104. Amend § 200.507 by revising paragraphs (a), (b)(2), (b)(3)(ii) through (v), (b)(4)(iv), (c)(2) and (3), and (d)(8) to read as follows:

§ 200.507 Program-specific audits.

(a) *Program-specific audit guide available.* In some cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement, Part 8, Appendix VI, Program-Specific Audit Guides, which includes a website where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit.

* * * * *

(b) * * *

(2) The auditee must prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that

describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of § 200.511(b), and a corrective action plan consistent with the requirements of § 200.511(c).

(3) * * *

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements of § 200.514(c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements of § 200.514(d) for a major program;

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of § 200.511, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and

(v) Report any audit findings consistent with the requirements of § 200.516.

(4) * * *

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with § 200.515(d)(1) and findings and questioned costs consistent with the requirements of § 200.515(d)(3).

(c) * * *

(2) When a program-specific audit guide is available, the auditee must electronically submit to the FAC the data collection form prepared in accordance with § 200.512(b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with § 200.512(b), as applicable to a program-specific audit, and one copy of this reporting package must be electronically submitted to the FAC.

(d) * * *

(8) 200.521 Management decision; and

* * * * *

■ 105. Amend § 200.508 by revising paragraphs (a), (b), and (c) to read as follows:

§ 200.508 Auditee responsibilities.

* * * * *

(a) Procure or otherwise arrange for the audit required by this part in accordance with § 200.509, and ensure it is properly performed and submitted when due in accordance with § 200.512.

(b) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with § 200.510.

(c) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 200.511(b) and (c), respectively.

* * * * *

■ 106. Amend § 200.509 by revising paragraph (a) to read as follows:

§ 200.509 Auditor selection.

(a) *Auditor procurement.* In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§ 200.317 through 200.326 of subpart D of this part or the FAR (48 CFR part 42), as applicable. When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in § 200.321, or the FAR (48 CFR part 42), as applicable.

* * * * *

■ 107. Amend § 200.510 by revising paragraphs (a), (b) introductory text, and (b)(3), (5), and (6) to read as follows:

§ 200.510 Financial statements.

(a) *Financial statements.* The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, non-Federal entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with § 200.514(a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended as determined in accordance with § 200.502. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may list the amount of Federal awards expended for each Federal award year separately. At a minimum, the schedule must:

* * * * *

(3) Provide total Federal awards expended for each individual Federal program and the Assistance Listings Number or other identifying number when the Assistance Listings information is not available. For a cluster of programs also provide the total for the cluster.

* * * * *

(5) For loan or loan guarantee programs described in § 200.502(b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.

(6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the 10% de minimis cost rate as covered in § 200.414.

■ 108. Amend § 200.511 by revising paragraphs (a) and (c) to read as follows:

§ 200.511 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule

of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under § 200.516(c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.

* * * * *

(c) *Corrective action plan.* At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in § 200.516, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

■ 109. Amend § 200.512 by revising paragraphs (b) introductory text, (b)(1), (c)(1) through (4), and (g) to read as follows:

§ 200.512 Report submission.

* * * * *

(b) *Data collection.* The FAC is the repository of record for subpart F of this part reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

(1) The auditee must submit required data elements described in Appendix X to Part 200, which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level representative of the auditee (*e.g.,* state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a website.

* * * * *

(c) * * *

(1) Financial statements and schedule of expenditures of Federal awards discussed in § 200.510(a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in § 200.511(b);

(3) Auditor's report(s) discussed in § 200.515; and

(4) Corrective action plan discussed in § 200.511(c).

* * * * *

(g) *FAC responsibilities.* The FAC must make available the reporting packages received in accordance with paragraph (c) of this section and § 200.507(c) to the public, except for Indian tribes exercising the option in (b)(2) of this section, and maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that have not submitted the required data collection forms and reporting packages.

* * * * *

■ 110. Amend § 200.513 by revising paragraphs (a)(1) and (2), (a)(3)(ii) and (vii), (b) introductory text, (c) introductory text, and (c)(3)(i) and (iii) to read as follows:

§ 200.513 Responsibilities.

(a)(1) *Cognizant agency for audit responsibilities.* A non-Federal entity expending more than $50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of funding directly (direct funding) (as listed on the Schedule of expenditures of Federal awards, see § 200.510(b)) to a non-Federal entity unless OMB designates a specific cognizant agency for audit. When the direct funding represents less than 25 percent of the total expenditures (as direct and subawards) by the non-Federal entity, then the Federal agency with the predominant amount of total funding is the designated cognizant agency for audit.

(2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2019, and every fifth year thereafter.

(3) * * *

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors, and provide the results to other interested organizations. Cooperate and provide support to the Federal agency designated by OMB to lead a governmentwide project to determine the quality of single audits by providing a reliable estimate of the extent that single audits conform to applicable requirements, standards, and procedures; and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards and procedures indicated by the results of the project. The governmentwide project can rely on the current and on-going quality control review work performed by the agencies, State auditors, and professional audit associations. This governmentwide audit quality project must be performed once every 6 years (or at such other interval as determined by OMB), and the results must be public.

* * * * *

(vii) Coordinate a management decision for cross-cutting audit findings (see in § 200.1 of this part) that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.

* * * * *

(b) *Oversight agency for audit responsibilities.* An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with § 200.1 *oversight agency for audit.* A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

* * * * *

(c) *Federal awarding agency responsibilities.* The Federal awarding agency must perform the following for the Federal awards it makes (See also the requirements of § 200.211):

(3) * * *

(i) Issue a management decision as prescribed in § 200.521;

* * * * *

(iii) Use cooperative audit resolution mechanisms (see the definition of *cooperative audit resolution* in § 200.1 of this part) to improve Federal program outcomes through better audit resolution, follow-up, and corrective action; and

* * * * *

■ 111. Amend § 200.514 by revising paragraphs (d)(4), (e), and (f) to read as follows:

§ 200.514 Scope of audit.

* * * * *

(d) * * *

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with § 200.516, assess the related control risk at the

(e) *Audit follow-up.* The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511(b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor must perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) *Data collection form.* As required in § 200.512(b)(3), the auditor must complete and sign specified sections of the data collection form.

■ 112. Amend § 200.515 by revising paragraphs (a), (d)(1)(vi) through (ix), (d)(3), and (e) to read as follows:

§ 200.515 Audit reporting.

* * * * *

(a) *Financial statements.* The auditor must determine and provide an opinion (or disclaimer of opinion) whether the financial statements of the auditee are presented fairly in all materials respects in accordance with generally accepted accounting principles (or a special purpose framework such as cash, modified cash, or regulatory as required by state law). The auditor must also decide whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

* * * * *

(d) * * *

(1) * * *

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under § 200.516(a);

(vii) An identification of major programs by listing each individual major program; however, in the case of a cluster of programs, only the cluster name as shown on the Schedule of Expenditures of Federal Awards is required;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in § 200.518(b)(1) or (3) when a recalculation of the Type A threshold is required for large loan or loan guarantees; and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under § 200.520.

* * * * *

(3) Findings and questioned costs for Federal awards which must include audit findings as defined in § 200.516(a).

* * * * *

(e) Nothing in this part precludes combining of the audit reporting required by this section with the reporting required by § 200.512(b) when allowed by GAGAS and appendix X to this part.

■ 113. Amend § 200.516 by revising paragraphs (a)(1) and (7), (b)(1) and (6), and (c) to read as follows:

§ 200.516 Audit findings.

(a) * * *

(1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or a material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

* * * * *

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with § 200.511(b) materially misrepresents the status of any prior audit finding.

(b) * * *

(1) Federal program and specific Federal award identification including the Assistance Listings title and number, Federal award identification number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the Assistance Listings title and number or Federal award identification number, is not available, the auditor must provide the best information available to describe the Federal award.

* * * * *

(6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable Assistance Listings number(s) and applicable Federal award identification number(s).

* * * * *

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by § 200.512(b) to allow for easy referencing of the audit findings during follow-up.

■ 114. Amend § 200.518 by revising paragraphs (b)(3) and (4), (c)(1) introductory text, (c)(1)(i) and (ii), (d)(1), and (f) to read as follows:

§ 200.518 Major program determination.

* * * * *

(b) * * *

(3) The inclusion of large loan and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. When a Federal program providing loans exceeds four times the largest non-loan program it is considered a large loan program, and the auditor must consider this Federal program as a Type A program and exclude its values in determining other Type A programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For the purposes of this paragraph a program is only considered to be a Federal program providing loans if the value of Federal awards expended for loans within the program comprises fifty percent or more of the total Federal awards expended for the program. A cluster of programs is treated as one program and the value of Federal awards expended under a loan program is determined as described in § 200.502.

(4) For biennial audits permitted under § 200.504, the determination of Type A and Type B programs must be based upon the Federal awards expended during the two-year period.

(c) * * *

(1) The auditor must identify Type A programs which are low-risk. In making

this determination, the auditor must consider whether the requirements in § 200.519(c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must have not had:

(i) Internal control deficiencies which were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);

(ii) A modified opinion on the program in the auditor's report on major programs as required under § 200.515(c); or

* * * * *

(d) * * *

(1) The auditor must identify Type B programs which are high-risk using professional judgment and the criteria in § 200.519. However, the auditor is not required to identify more high-risk Type B programs than at least one fourth the number of low-risk Type A programs identified as low-risk under Step 2 (paragraph (c) of this section). Except for known material weakness in internal control or compliance problems as discussed in § 200.519(b)(1) and (2) and (c)(1), a single criterion in risk would seldom cause a Type B program to be considered high-risk. When identifying which Type B programs to risk assess, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

* * * * *

(f) *Percentage of coverage rule.* If the auditee meets the criteria in § 200.520, the auditor need only audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

* * * * *

■ 115. Amend § 200.519 by revising paragraph (d)(1) to read as follows:

§ 200.519 Criteria for Federal program risk.

* * * * *

(d) * * *

(1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third-party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of § 200.430, but otherwise be at low risk.

* * * * *

■ 116. Amend § 200.520 by revising the introductory text and paragraphs (a) and (e)(1) and (2) to read as follows:

§ 200.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with § 200.518.

(a) Single audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in § 200.512. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.

* * * * *

(e) * * *

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under § 200.515(c);

(2) A modified opinion on a major program in the auditor's report on major programs as required under § 200.515(c); or

* * * * *

■ 117. Amend § 200.521 by revising paragraph (b), (c), and (e) to read as follows:

§ 200.521 Management decision.

* * * * *

(b) *Federal agency.* As provided in § 200.513(a)(3)(vii), the cognizant agency for audit must be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in § 200.513(c)(3)(i), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to non-Federal entities.

(c) *Pass-through entity.* As provided in § 200.332(d), the pass-through entity must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.

* * * * *

(e) *Reference numbers.* Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with § 200.516(c).

■ 118. Amend appendix I to part 200 by revising sections A, B, C paragraph 2, D paragraphs 3 through 5, E paragraph 3 introductory text, E paragraph 3.iii, and F paragraphs 1 and 3 to read as follows:

Appendix I to Part 200—Full Text of Notice of Funding Opportunity

* * * * *

A. Program Description—Required

This section contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the Federal awarding agency's funding priorities or the technical or focus areas in which the Federal awarding agency intends to provide assistance. As appropriate, it may include any program history (*e.g.,* whether this is a new program or a new or changed area of program emphasis). This section must include program goals and objectives, a reference to the relevant Assistance Listings, a description of how the award will contribute to the achievement of the program's goals and objectives, and the expected performance goals, indicators, targets, baseline data, data collection, and other outcomes such Federal awarding agency expects to achieve, and may include examples of successful projects that have been funded previously. This section also may include other information the Federal awarding agency deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

B. Federal Award Information—Required

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that the Federal awarding agency expects to award through the announcement; the expected performance indicators, targets, baseline data, and data collection; the anticipated number of Federal awards;

the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

This section also must indicate the type(s) of assistance instrument (*e.g.,* grant, cooperative agreement) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the ''substantial involvement'' that the Federal awarding agency expects to have or should reference where the potential applicant can find that information (*e.g.,* in the funding opportunity description in Section A. or Federal award administration information in Section D. If procurement contracts also may be awarded, this must be stated.

C. Eligibility Information

* * * * *

2. *Cost Sharing or Matching—Required.* Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (*e.g.,* provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (*e.g.,* in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as described in § 200.306 of this Part. This section should refer to the appropriate portion(s) of section D. stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

* * * * *

D. Application and Submission Information

* * * * *

3. *Unique entity identifier and System for Award Management (SAM)—Required.* This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR 25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR 25.110(d)) is required to: (i) Be registered in SAM before submitting its application; (ii) Provide a valid unique entity identifier in its application; and (iii) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times—Required.* Announcements must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (*e.g.,* letters of intent, white papers, or pre-applications). It also includes any other submissions of information before Federal award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see § 200.204 of this part).

5. *Intergovernmental Review—Required, if applicable.* If the funding opportunity is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' the notice must say so and applicants must contact their state's Single Point of Contact (SPOC) to find out about and comply with the state's process under Executive Order 12372, it may be useful to inform potential applicants that the names and addresses of the SPOCs are listed in the Office of Management and Budget's website.

* * * * *

E. Application Review Information

* * * * *

3. For any Federal award under a notice of funding opportunity, if the Federal awarding agency anticipates that the total Federal share will be greater than the simplified acquisition threshold on any Federal award under a notice of funding opportunity may include, over the period of performance, this section must also inform applicants:

* * * * *

iii. That the Federal awarding agency will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in § 200.206.

* * * * *

F. Federal Award Administration Information

1. Federal Award Notices—Required. This section must address what a successful applicant can expect to receive following selection. If the Federal awarding agency's practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity's own risk). This section should indicate that the notice of Federal award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also § 200.211.

* * * * *

3. *Reporting—Required.* This section must include general information about the type (*e.g.,* financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (*e.g.,* by report type, frequency, form/format, or circumstances for use) from what the Federal awarding agency's Federal awards usually require. Federal awarding agencies must also describe in this section all relevant requirements such as those at 2 CFR 180.335 and 180.350.

If the Federal share of any Federal award may include more than $500,000 over the period of performance, this section must inform potential applicants about the post award reporting

requirements reflected in appendix XII to this part.

* * * * *

■ 119. Amend appendix II to part 200 by revising paragraphs (A) and (J) and adding paragraphs (K) and (L) to read as follows:

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

* * * * *

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

* * * * *

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.

■ 120. Amend appendix III to part 200:

■ a. Under section A by revising the introductory text and paragraphs 1.d introductory text, 2.b, 2.d(4) introductory text, 2.d.(4)(b), 2.d.(5), and 2.e.(1); and

■ b. Under section B by revising paragraphs 1, 2.a and b introductory text, 3, 4.c.(2)(ii)B, 5.a, 6.a.(2)(a), 6.b.(1), 8.a., and 9.a;

■ c. Under section C by revising paragraphs 1.a.(1) and (3), 2., 7, 8.a., 9.a., 11.a. introductory text, 11.a.(1), 11.a.(2)b;

■ d. By revising section E;

■ e. Under section F by revising paragraph 2.c.

The revisions read as follows:

Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

A. General

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1 for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

* * * * *

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in § 200.468 of this part.

* * * * *

2. Criteria for Distribution

* * * * *

b. *Need for cost groupings.* The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect (F&A) cost categories referred to in subsection B.1. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection c of this section. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in light of the guidelines set forth in subsection d of this section.

* * * * *

d. * * *

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution must be made in accordance with the appropriate base cited in Section B, unless one of the following conditions is met:

* * * * *

(b) The institution qualifies for, and elects to use, the simplified method for computing indirect (F&A) cost rates described in Section D.

(5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section B must not be used to distribute utility or student services costs. Instead, subsection B.4.c, may be used in the recovery of utility costs.

e. * * *

(1) Indirect (F&A) costs are the broad categories of costs discussed in Section B.1.

* * * * *

B. Identification and Assignment of Indirect (F&A) Costs

1. Definition of Facilities and Administration

See § 200.414 which provides the basis for these indirect cost requirements.

2. Depreciation

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 200.436.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the following manner:

3. Interest

Interest on debt associated with certain buildings, equipment and capital improvements, as defined in § 200.449, must be classified as an expenditure under the category Facilities. These costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital improvements to which the interest relates.

4. Operation and Maintenance Expenses

* * * * *

c. * * *

(2) * * *

(ii) * * *

B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory ''Labs for the 21st Century'' benchmarking tool and the US Department of Energy ''Buildings Energy Databook'' and were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB website.

5. General Administration and General Expenses

a. The expenses under this heading are those that have been incurred for the general executive and administrative

offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; *i.e.,* solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of general administration and general expenses include: Those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and the operations of the central administrative management information systems. General administration and general expenses must not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection 6.)

* * * * *

6. Departmental Administration Expenses

a. * * *

(2) * * *

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads) and other professional personnel conducting research and/or instruction, must be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance must be added to the computation of the indirect (F&A) cost rate for major functions in Section C; the expenses covered by the allowance must be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

* * * * *

b. The following guidelines apply to the determination of departmental administrative costs as direct or indirect (F&A) costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect (F&A) costs. For example, salaries of technical staff, laboratory supplies (*e.g.,* chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs must be treated as direct costs wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefitting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. See §§ 200.413(c) and 200.468.

* * * * *

8. Library Expenses

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under § 200.406. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation. Costs incurred in the purchases of rare books (museum-type books) with no value to Federal awards should not be allocated to them.

* * * * *

9. Student Administration and Services

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with subpart E of this Part. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, interest expense, and depreciation.

* * * * *

C. Determination and Application of Indirect (F&A) Cost Rate or Rates

1. Indirect (F&A) Cost Pools

a. (1) Subject to subsection b, the separate categories of indirect (F&A) costs allocated to each major function of the institution as prescribed in Section B, must be aggregated and treated as a common pool for that function. The amount in each pool must be divided by the distribution base described in subsection 2 to arrive at a single indirect (F&A) cost rate for each function.

* * * * *

(3) Each institution's indirect (F&A) cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the indirect (F&A) costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the indirect (F&A) cost pools, as described in Sections A.2 and B.2 through B.9, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection 2) for each major function (organized research, instruction, etc., as described in Section A.1 functions of an institution) must contain all the programs or activities which utilize the indirect (F&A) costs allocated to that major function. At the time an indirect (F&A) cost proposal is submitted to a cognizant agency for indirect costs, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in § 200.1. For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

* * * * *

7. Fixed Rates for the Life of the Sponsored Agreement

a. Except as provided in paragraph (c)(1) of § 200.414, Federal agencies must use the negotiated rates in effect at the time of the initial award throughout the life of the Federal award. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. ''Negotiated rates'' per the rate agreement include final, fixed, and predetermined rates and exclude provisional rates. ''Life'' for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal awarding agency at the time of the Federal award. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award must be extended through the end of the life of the Federal award.

b. Except as provided in § 200.414, when an educational institution does not have a negotiated rate with the Federal Government at the time of an award (because the educational institution is a new recipient or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award must be adjusted once a rate is negotiated and approved by the cognizant agency for indirect costs.

8. Limitation on Reimbursement of Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, the administrative costs charged to Federal awards awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, must be limited to 26% of modified total direct costs (as defined in subsection 2) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Section B, and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section B.

* * * * *

9. Alternative Method for Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, an institution may elect to claim a fixed allowance for the ''Administration'' portion of indirect (F&A) costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under ''Administration'' as defined in Section B.1, whichever is less. Under this alternative, no cost proposal need be prepared for the ''Administration'' portion of the indirect (F&A) cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated indirect (F&A) cost agreement includes this alternative, an institution must make no further charges for the expenditure categories described in Section B.5, Section B.6, Section B.7, and Section B.9.

* * * * *

11. Negotiation and Approval of Indirect (F&A) Rate

a. Cognizant agency for indirect costs is defined in Subpart A.

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds directly to the educational institution for the most recent three years. Information on funding must be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding directly to an educational institution, the cognizant agency for indirect costs assignment must default to HHS. Notwithstanding the method for cognizance determination described in this section, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and must be decided based on mutual agreement between HHS and DOD. Where a non-Federal entity only receives funds as a subrecipient, see § 200.332.

(2) * * *

b. Acceptance of rates. See § 200.414.

* * * * *

E. Documentation Requirements

The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB website.

F. Certification

* * * * *

2. * * *

c. *Certificate.* The certificate required by this section must be in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under subpart E of this part such as (without limitation): Public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Institution of Higher Education:
Signature: _____
Name of Official: _____
Title: _____
Date of Execution: _____

■ 121. Amend appendix IV to part 200:
■ a. By revising section A;
■ b. Under section B by revising paragraphs 2.b through e, 3.b(1), (2), and (4), 3.c.(4), 3.f and g, and 4.b and c;
■ c. Under section C by revising paragraphs 2.a through c; and
■ d. Under section D by revising (D)(1), and under the center heading ''Certificate of Indirect (F&A) Costs'', paragraphs (2) and (3).

The revisions read as follows:

Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

A. General

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in § 200.413(d). After direct costs have been determined and assigned directly

to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefitting cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. ''Major nonprofit organizations'' are defined in paragraph (a) of § 200.414. See indirect cost rate reporting requirements in sections B.2.e and B.3.g of this Appendix.

B. Allocation of Indirect Costs and Determination of Indirect Cost Rates

* * * * *

2. Simplified Allocation Method

* * * * *

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in § 200.413(e).

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as subawards for $25,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in § 200.1.

d. Except where a special rate(s) is required in accordance with section B.5 of this Appendix, the indirect cost rate developed under the above principles is applicable to all Federal awards of the organization. If a special rate(s) is required, appropriate modifications must be made in order to develop the special rate(s).

e. For an organization that receives more than $10 million in direct Federal funding in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in paragraph (a) of § 200.414, is required. The rate in each case must be stated as the percentage which the amount of the particular indirect cost category (*i.e.,* Facilities or Administration) is of the distribution base identified with that category.

3. Multiple Allocation Base Method

* * * * *

(b) * * *

(1) Depreciation. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with § 200.436.

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with § 200.449.

* * * * *

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category must also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs must be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate as described in § 200.413. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

(c) * * *

(4) General administration and general expenses. General administration and general expenses must be allocated to benefitting functions based on modified total costs (MTC). The MTC is the modified total direct costs (MTDC), as described in § 200.1, plus the allocated indirect cost proportion. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to benefitting functions based on MTC.

* * * * *

f. Distribution basis. Indirect costs must be distributed to applicable Federal awards and other benefitting activities within each major function on the basis of MTDC (see definition in § 200.1).

g. Individual Rate Components. An indirect cost rate must be determined for each separate indirect cost pool developed. The rate in each case must be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement must include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools must be classified within two broad categories: ''Facilities'' and ''Administration,'' as described in § 200.414(a).

4. Direct Allocation Method

* * * * *

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each Federal award or other activity. The bases must be established in accordance with reasonable criteria and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates must be computed in the same manner as that described in section B.2 of this Appendix.

* * * * *

C. Negotiation and Approval of Indirect Cost Rates

* * * * *

2. Negotiation and Approval of Rates

a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards directly funded to an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards directly funded to the organization for at least three years. All concerned Federal agencies must be given the opportunity

to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also § 200.414.) If the nonprofit does not receive any funding from any Federal agency, the pass-through entity is responsible for the negotiation of the indirect cost rates in accordance with § 200.332(a)(4).

b. Except as otherwise provided in § 200.414(f), a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award.

c. Unless approved by the cognizant agency for indirect costs in accordance with § 200.414(g), organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year.

* * * * *

D. Certification of Indirect (F&A) Costs

(1) Required Certification. No proposal to establish indirect (F&A) cost rates must be acceptable unless such costs have been certified by the nonprofit organization using the Certificate of Indirect (F&A) Costs set forth in section j. of this appendix. The certificate must be signed on behalf of the organization by an individual at a level no lower than vice president or chief financial officer for the organization.

* * * * *

Certificate of Indirect (F&A) Costs

* * * * *

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal awards to which they apply and with subpart E of this part.

(3) This proposal does not include any costs which are unallowable under subpart E of this part such as (without limitation): Public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

* * * * *

■ 122. Amend appendix V to part 200 by revising:

■ a. Section A, paragraph 2;
■ b. Section B, paragraph 4;
■ c. Section C
■ d. Section E, paragraph 3.b.(1); and
■ e. Section G, paragraph 5.

The revisions read as follows:

Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans

A. General

* * * * *

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled ''*A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government.*'' A copy of this brochure may be obtained from the HHS Cost Allocation Services or at their website.

B. Definitions

* * * * *

4. *Cognizant agency for indirect costs* is defined in § 200.1. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1.

* * * * *

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. omitted from the plan will not be reimbursed.

E. Documentation Requirements for Submitted Plans

* * * * *

3. Billed Services

* * * * *

b. * * *

(1) For each internal service fund or similar activity with an operating budget of $5 million or more, the plan must include: A brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, *e.g.,* regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by GAAP) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this part, with an explanation of how variances will be handled.

* * * * *

G. Other Polices

* * * * *

5. Records Retention

All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in subpart D of this part.

* * * * *

■ 123. Amend appendix VI to part 200 by revising paragraph 2 in section D to read as follows:

Appendix VI to Part 200—Public Assistance Cost Allocation Plans

* * * * *

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

* * * * *

2. Under the coordination process outlined in section E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the calendar quarter following the event that required the amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency for indirect costs acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the state public assistance agency and will inform the state agency of the action taken on the plan or plan amendment.

* * * * *

■ 124. Amend appendix VII to part 200 by revising:

■ a. Section A, paragraphs 2, 3, 4, and 5;
■ b. Section B, paragraph 3;
■ c. Section D, paragraph 1a.; and
■ d. Section E, paragraph 4.

The revisions read as follows:

Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

A. General

* * * * *

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to this part) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled ''*A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.*'' A copy of this brochure may be obtained from HHS Cost Allocation Services or at their website.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the non-Federal entity accounting and personnel services performed within the non-Federal entity, depreciation on buildings and equipment, the costs of operating and maintaining facilities.

5. This Appendix does not apply to state public assistance agencies. These agencies should refer instead to Appendix VI to this part.

B. Definitions

* * * * *

3. *Cognizant agency for indirect costs* means the Federal agency responsible for reviewing and approving the governmental unit's indirect cost rate(s) on the behalf of the Federal Government. The cognizant agency for indirect costs assignment is described in Appendix V, section F.

* * * * *

D. Submission and Documentation of Proposals

1. Submission of Indirect Cost Rate Proposals

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in § 200.334.

* * * * *

E. Negotiation and Approval of Rates

* * * * *

4. Refunds must be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in § 200.420, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

* * * * *

■ 125. Amend appendix VIII to part 200 by revising the heading and paragraphs 32 and 33 to read as follows:

Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E of Part 200

* * * * *

32. Nonprofit insurance companies, such as Blue Cross and Blue Shield Organizations

33. Other nonprofit organizations as negotiated with Federal awarding agencies

■ 126. Appendix XI to part 200 is revised to read as follows:

Appendix XI to Part 200—Compliance Supplement

The compliance supplement is available on the OMB website.

■ 127. Amend appendix XII to part 200 by revising section A, paragraph 2.b to read as follows:

Appendix XII to Part 200—Award Term and Condition for Recipient Integrity and Performance Matters

A. Reporting of Matters Related to Recipient Integrity and Performance

* * * * *

2. Proceedings About Which You Must Report

* * * * *

b. Reached its final disposition during the most recent five-year period; and

* * * * *

[FR Doc. 2020–17468 Filed 8–11–20; 8:45 am]

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FEDERAL REGISTER

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No. 157 August 13, 2020

Part V

The President

Memorandum of August 8, 2020—Continued Student Loan Payment Relief During the COVID–19 Pandemic

Memorandum of August 8, 2020—Deferring Payroll Tax Obligations in Light of the Ongoing COVID–19 Disaster

Federal Register
Vol. 85, No. 157
Thursday, August 13, 2020

Presidential Documents

Title 3—

The President

Memorandum of August 8, 2020

Continued Student Loan Payment Relief During the COVID–19 Pandemic

Memorandum for the Secretary of Education

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* The 2019 novel coronavirus known as SARS–CoV–2, the virus causing outbreaks of the disease COVID–19, has significantly disrupted the lives of Americans. In Proclamation 9994 of March 13, 2020 (Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19) Outbreak), I declared, pursuant to the National Emergencies Act (50 U.S.C. 1601 *et seq.*), that the COVID–19 outbreak in the United States constituted a national emergency (the ''national emergency''). The same day, I also determined that the COVID–19 outbreak constituted an emergency of nationwide scope, pursuant to section 501(b) of the Stafford Act (42 U.S.C. 5191(b)).

On March 20, 2020, my Administration took action to provide immediate relief to tens of millions of student loan borrowers during the pandemic caused by COVID–19 by both suspending loan payments and temporarily setting interest rates to 0 percent. This relief has helped many students and parents retain financial stability. And many other Americans have continued to routinely pay down their student loan balances, to more quickly eliminate their loans in the long run. During this time, borrowers have been able to determine the best path forward for themselves.

The original announcement of this policy specified that it would continue for at least 60 days. In the interim, the Coronavirus Aid, Relief, and Economic Security Act provided this same student loan payment relief, but that program is scheduled to expire on September 30, 2020. Currently, many Americans remain unemployed due to the COVID–19 pandemic, and many more have accepted lower wages and reduced hours while States and localities continue to impose social distancing measures. It is therefore appropriate to extend this policy until such time that the economy has stabilized, schools have re-opened, and the crisis brought on by the COVID–19 pandemic has subsided.

Sec. 2. *Extension of Student Loan Payment Relief.* (a) In light of the national emergency declared on March 13, 2020, the Secretary of Education shall take action pursuant to applicable law to effectuate appropriate waivers of and modifications to the requirements and conditions of economic hardship deferments described in section 455(f)(2)(D) of the Higher Education Act of 1965, as amended, 20 U.S.C. 1087e(f)(2)(D), and provide such deferments to borrowers as necessary to continue the temporary cessation of payments and the waiver of all interest on student loans held by the Department of Education until December 31, 2020.

(b) All persons who wish to continue making student loan payments shall be allowed to do so, notwithstanding the deferments provided pursuant to subsection (a) of this section.

Sec. 3. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

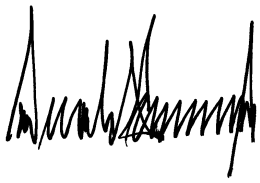
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, August 8, 2020

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Filed 8–12–20; 11:15 am]
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Presidential Documents

Memorandum of August 8, 2020

Deferring Payroll Tax Obligations in Light of the Ongoing COVID–19 Disaster

Memorandum for the Secretary of the Treasury

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* The 2019 novel coronavirus (COVID–19) that originated in the People's Republic of China has caused significant, sudden, and unexpected disruptions to the American economy. On March 13, 2020, I determined that the COVID–19 pandemic is of sufficient severity and magnitude to warrant an emergency declaration under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207, and that is still the case today. American workers have been particularly hard hit by this ongoing disaster. While the Department of the Treasury has already undertaken historic efforts to alleviate the hardships of our citizens, it is clear that further temporary relief is necessary to support working Americans during these challenging times. To that end, today I am directing the Secretary of the Treasury to use his authority to defer certain payroll tax obligations with respect to the American workers most in need. This modest, targeted action will put money directly in the pockets of American workers and generate additional incentives for work and employment, right when the money is needed most.

Sec. 2. *Deferring Certain Payroll Tax Obligations.* The Secretary of the Treasury is hereby directed to use his authority pursuant to 26 U.S.C. 7508A to defer the withholding, deposit, and payment of the tax imposed by 26 U.S.C. 3101(a), and so much of the tax imposed by 26 U.S.C. 3201 as is attributable to the rate in effect under 26 U.S.C. 3101(a), on wages or compensation, as applicable, paid during the period of September 1, 2020, through December 31, 2020, subject to the following conditions:

(a) The deferral shall be made available with respect to any employee the amount of whose wages or compensation, as applicable, payable during any bi-weekly pay period generally is less than $4,000, calculated on a pre-tax basis, or the equivalent amount with respect to other pay periods.

(b) Amounts deferred pursuant to the implementation of this memorandum shall be deferred without any penalties, interest, additional amount, or addition to the tax.

Sec. 3. *Authorizing Guidance.* The Secretary of the Treasury shall issue guidance to implement this memorandum.

Sec. 4. *Tax Forgiveness.* The Secretary of the Treasury shall explore avenues, including legislation, to eliminate the obligation to pay the taxes deferred pursuant to the implementation of this memorandum.

Sec. 5. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

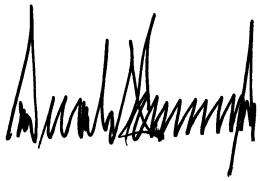
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, August 8, 2020

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Filed 8–12–20; 11:15 am]
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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available at *https://www.govinfo.gov*. Some laws may not yet be available.

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